
(2006) 07 GAU CK 0030
In the Gauhati High Court

Rukumoni Basumatary and Others

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 1 GLT 563

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—Nine students of Oxford Public School, Maligaon, respondent No. 3, which is a unaffiliated school, by this writ petition has prayed for a direction to the Central Board of Secondary Education (in short CBSE) to allow 28 candidates of the said school to appear in the All India Senior School Certificate examination through any school affiliated by CBSE in Guwahati and to declare the results of the same. An interim order was also prayed for directing the CBSE to allow those candidates of 2006 through any CBSE affiliated school in Guwahati. A learned Single Bench of this Court vide order dated 24.02.2006 passed an interim order directing the CBSE and its Regional Officer to allow those 28 candidates in the said examination but directed and said authority to keep the result withheld until further direction from this Court. By another order dated 28.02.2006 another interim direction was issued continuing the earlier interim order dated 24.02.2006.

2. The facts in brief is that the petitioners who have filed the writ petition on their behalf as well as on behalf of 19 other students of respondent No. 3 school, 28 in total, claim that they were admitted in Oxford Public School, Maligaon in Class XI in the year 2004, which school prepares students for appearing in the All India Senior School Certificate Examination conducted by the CBSE and which has not been affiliated by the CBSE. According to the petitioners though the management of the school has been trying to obtain affiliation under the CBSE it

was not affiliated by the CBSE, when they were admitted into the said course and the school has also not been affiliated till date. The further case of the petitioners is that the students of the said school were allowed to appear in the said examination in the previous year i.e. 2003, 2004 and 2005 conducted by the CBSE from other schools in Guwahati, which are affiliated under CBSE. But as in this year i.e. 2006 the said schools refused to allow the students of the respondent No. 3 school to appear in the said examination of 2006 through them, without any permission from the CBSE authority to do so, their carrier as a student is in jeopardy, therefore has filed the writ petition seeking a direction to the CBSE authorities to allow them to appear in the examination of 2006 with an interim prayer directing the said authority to allow them to appear in the said examination conducted in 2006.

3. I have heard Mr. N. Dutta, learned senior counsel for the petitioners, Mr. Chinmoy Choudhury, learned Counsel appearing on behalf of the respondent Nos. 1 and 2 i.e. CBSE authority and Mr. T.J. Mahanta, learned Counsel appearing on behalf of the respondent No. 3 i.e. Oxford Public School.

4. Mr. Dutta, learned senior counsel appearing on behalf of the petitioners has submitted that though it is a fact that respondent No. 3 school, in which the petitioners were admitted into the course to prepare for the All India Senior School Examination conducted by the CBSE, is a school not affiliated by the CBSE but the management of the school in spite of their best effort is not getting the affiliation from the CBSE, therefore in the previous years i.e. 2003, 2004 and 2005 the students admitted in to the said school appeared in the said final examination conducted by the CBSE through other affiliated schools of CBSE in Guwahati, but this year i.e. for the examination conducted in the year 2006 the said affiliated schools refused to allow the students of the respondent No. 3 school to appear in the said examination without there being any permission from the CBSE authority to do so. According to the learned senior counsel since it is a practice of allowing students of respondent No. 3 school to appear in the final examination conducted by CBSE through other affiliated schools, the petitioners and others were also under the impression that they will be allowed to appear in the said final examination, as has been done in the previous years, but the action on the part of the CBSE in not allowing them to appear has jeopardized their carrier and amounting to loss of their valuable two years of studies, which cannot be done by the CBSE authority. In any case, according to the learned senior counsel, since in terms of the interim order passed by this Court the students of the respondent No. 3 school including the present petitioners have already appeared in the said examination conducted by the CBSE authority, except practical examination, the CBSE authority may be directed to conduct the practical examination in respect of those students and thereafter to declare the results on the basis of such examination, so that two valuable years of the students are not lost.

5. The learned senior counsel for the petitioners relying on the decision of the

Apex Court in *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, has submitted that as the Apex Court in the said case even after holding that the appellants therein were not eligible for admission into the engineering degree course of Karnataka University, admission being contrary to the ordinance prescribing the conditions of eligibility, has allowed them to continue their studies in the respective engineering colleges in which they were admitted, in view of the fact that the blame for their wrongful admission must lie more upon the engineering colleges which granted admission than upon the appellants. The learned senior counsel submits that as the petitioners and others have already appeared in the examination, this Court may also direct the respondents CBSE authority to conduct practical examination for them and to declare results thereafter. Relying on the decision of the State of Maharashtra Vs. *Vikas Sahebrao Roundale and others*, the learned senior counsel has further submitted that even if the petitioners are not entitled to sit in the examination conducted by the CBSE authority on the ground that the respondent No. 3 school in which they were admitted is an unaffiliated school, keeping in view the interests of the students, the CBSE authority may be directed to declare the results after holding the practical examination for them.

6. Mr. Chinmoy Choudhury, learned Counsel appearing on behalf of the CBSE authority i.e. the respondent No. 1 and 2, has submitted that admittedly the respondent No. 3 school in which the petitioners were admitted is not a school affiliated under the CBSE and therefore, the petitioners cannot file a writ petition seeking a direction against the CBSE authority to allow them to sit in the final examination as the CBSE authority cannot allow any students of any unaffiliated school to sit in such examination. Countering the argument put forward by the learned senior counsel for the petitioners that in the earlier years i.e. 2003, 2004 and 2005 the CBSE authority has allowed the students of the respondent No. 3 school to appear in the final examination conducted by it through other affiliated school, in Guwahati. Mr. Choudhury, the learned Counsel has submitted that it was not within the knowledge of the CBSE authority that the students from the respondent No. 3 school appeared in such examination from other affiliated school in CBSE and in any case even if the same was allowed, the petitioners cannot pray for a direction to allow them to appear in the examination, as it will amount to perpetuate the illegality, if any, committed earlier. Mr. Choudhury, learned Counsel has further submitted that for appearing in an examination conducted by the CBSE from any school, the said school has to be affiliated under the CBSE and no students of school which is not affiliated can be allowed to appear in such examination. It has further been submitted that the prayer made by the writ petitioner in the writ petition that they should be allowed to appear in the said examination through other affiliated schools in Guwahati cannot also be granted in view of the fact that for appearing in such examination the candidates must have 75% attendance in such affiliated school and admittedly the petitioners and other similarly placed persons of respondent No. 3 school are not the students of any affiliated school and therefore they cannot be

allowed to sit in the examination conducted by the CBSE. According to the learned Counsel if such prayer of the petitioners is allowed it will amount to encouraging and condoning the establishment of unauthorized institutions and also amount to encouraging violation of the bye laws of the CBSE. The learned Counsel in support of his contention has placed reliance on the decision of the Apex Court in *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, *C.B.S.E. and Another Vs. P. Sunil Kumar and Others*, *Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others*,

7. Mr. Mahanta, the learned Counsel appearing on behalf of the respondent No. 3 has also submitted that the respondent No. 3 school, which is a school own by a private individuals, applied for affiliation but no affiliation has been granted till date, but in anticipation of granting affiliation from CBSE the students were admitted into the course of All India Senior School Certificate Examination and in previous years the students admitted to the respondent No. 3 school appeared in such final examination conducted by the CBSE through other affiliated institutions of the CBSE, but in this year those schools refused to set up the students of respondent No. 3 school" for such examination unless and until permission is granted by the CBSE authority. The learned Counsel relying on the statement made in the affidavit filed on behalf of the respondent No. 3 has submitted that in view of refusal of its students to appear in the examination by CBSE, the school authority has decided not to admit any student from the current academic session and has also decided to close down the said school.

8. Chapter 2 bye law 3(1) of the Affiliation Bye Laws of Central Board of Secondary Education provides that the board may affiliate several categories of schools all over India and abroad, for example:

(i) Government or Government aided schools;

(ii) Schools run by autonomous Organizations under the Government like Kendriya Vidyalaya Sangathan, Navodaya Vidyalaya Samiti, Central Tibetan Schools Organization, Sainik Schools Society etc.

(iii) Schools run by Government Deptts. Directly like defence, Railways etc.

(iv) Schools managed directly by Public Sector Undertakings or by reputed societies for Public Sector Undertakings under the financial control of such Public Sector Undertakings or by Societies formed by such Undertakings.

(v) Private, unaided schools established by Societies registered under the Societies Registration Act 1860 of the Government of India or under Acts of the State Governments as educational, charitable or religious societies having non-proprietary character or by Trusts.

9. Admittedly the petitioner's school does not come within any of the aforesaid five categories of schools, the respondent No. 3 being a school owned by an individuals and therefore, it does not satisfy the norms for affiliation by the CBSE. The contention of the petitioners that the respondent No. 3 school in its

right earnest was trying to get the affiliation from CBSE but the affiliation was not granted by the CBSE thereby jeopardizing the interest of the students cannot be accepted, in view of the fact that the school does not satisfy the norms for giving such affiliation as it is a school owned by a private individuals.

10. Bye law 12 of the Examination Bye-Laws of the CBSE provides that the All India/Delhi Senior School Certificate Examination and Secondary School Examination will be open to such regular candidates who have submitted their duly completed applications for admission to the concerning examination, and/or his name in the manner prescribed by the Board, along with prescribed fee forwarded to the Controller of Examinations by the Head of the Institution/School certifying that he possess the academic qualification laid down in byelaw 11 of these byelaws; that he has not passed equivalent or higher examination of any other board or university; that he is on the active rolls of the school, that he has completed a regular course of study as defined and detailed in byelaw 13 of the Byelaws in a School in the subjects in which he would appear in the examination; that he bears a good moral character and is of good conduct; and that he satisfies all other provisions, applicable to him/her, of the examination byelaws and any other provision made by the Board governing admission to the examination concerned, if any.

11. The "School" has been defined in byelaw 2(XVI) as a school affiliated to the Central Board of Secondary Education. The "Regular Candidates" is defined in byelaw 11 of the said byelaws, which means a student enrolled in a school, which has prosecuted a regular course of study in a school and seeks admission as such to the All India/Delhi Senior School Certificate/Secondary School Examination of the Board. The expression "a regular course of study" as mentioned in byelaw 12 of the said byelaw means at least 75% attendance in the classes held; counted from the day of commencing teaching of classes X/XII up to the 1st of the month preceding the month in which the examination of the Board commences. It has further been stipulated that the candidates taking a subject(s) involving practical is also required to have put in at least 75% of the total attendance for practical work in the subject in the labouratory and the heads of institution shall not allow a candidates who have offered subject(s) involving practicals to take the practicals examination(s) unless the candidates fulfills the attendance requirements as stipulated in the said byelaw. For better appreciation byelaw 13 of the Examination Bye-law is quoted in its entirety.

13. A Regular Course of Study

13. 1 ** (i) The expression "a regular course of study" referred to in these Bye-Laws means at least 75% of attendance in the Classes held; counted from the day of commencing teaching of Classes X/XII upto the 1st month preceding the month in which the examination of the Board commences. Candidates taking up a subject(s) involving practicals shall also be required to have ut in at least 75% of the total attendance for practical work in the subject in the laboratory. Heads of Institutions shall not allow a candidate who has offered subject(s) involved

practicals to take the practical examination(s) unless the candidate fulfills the attendance requirements as given in his Rule.

(ii) The candidates who had failed in the same examination in the preceding year and who rejoins Classes X/XII shall be required to put in 75% of attendance calculated on the possible attendance from the 1st of the month following the publication of the results of that examination by the Board up to the 1st of the month preceding the month in which the examination of the Board commences.

(iii) In the case of migration from other institutions, attendance at the institution/school recognized by the Education Department of the State/Union Territory from which the candidate migrates will be taken into account in calculating the required percentage of attendance.

2. Requirement of Attendances in Subjects of internal Assessment.

(i) No student from a School affiliated to the Board shall be eligible to take the examination unless he has completed 75% of attendances counted from the opening of class X/XII up to the first of the month preceding the month in which the examination commences in the subjects of internal assessment.

(ii) Exemption from W.E./Art Fxhication/P & HE may be granted to a candidate on medical grounds provided the application is supported by a certificate given by a Registered Medical Officer of the rank not below that of Asstt. Surgeon and forwarded by the Head of the School with his recommendations.

(iii) The Chairman shall have powers to condone shortage of attendances in subjects of internal assessment.

12. It is therefore apparent from the bye law 13 of the Examination Bye Law that for the purpose of admission of students to the examination conducted by the CBSE, the students must at least have 75% of attendance in classes subject to condonation of shortage of attendance as stipulated in the said bye-laws, in a school affiliated under CBSE.

13. Bye law 12(1) of the Examination Bye-Laws further provides that it is mandatory upon a school affiliated to Board to follow the Examination Bye Laws in toto and no affiliated school shall endeavour to present the candidates who are not on its roll nor will it present the candidates of its un-affiliated branch/schools to any of the Boards examination.

14. It is therefore, evident that the students having at least 75% attendance, subject to the condonation of such shortage of attendance that may be allowed as stipulated in suchbyelaws, of an affiliated school can only present its candidates for admission to examination i.e. to appear in any examination conducted by the CBSE. No candidates of any unaffiliated school can be set up by any affiliated school for appearing in any examination conducted by the CBSE. In the present case admittedly the respondent No. 3 school is not a school affiliated under the CBSE and in fact the said school does not fulfill the norms for

affiliation, therefore, the said school cannot present any of its students to appear in any examination conducted by the CBSE as under the Examination Bye-Laws the CBSE can only allow those candidates of any affiliated school who fulfill the conditions for appearing in such examination. The contention of the petitioners that as in previous years i.e. in 2003 to 2005 the CBSE authority has allowed the students of the respondent No. 3 school to appear in the examination conducted by it through other affiliated schools in Guwahati, therefore, the students of the respondent No. 3 school should also be allowed to appear in the examination conducted by the CBSE in 2006, also cannot be accepted, firstly, as there is a specific bar in bye law 12.1 of the Examination Bye Laws of the CBSE debarring any affiliated school to present candidates of any unaffiliated school to any of the boards examination and secondly, even if such students were allowed to sit in the examination conducted by the CBSE on previous occasions illegally, the Court cannot pass an order which will have effect of perpetuating such illegality. Moreover, no person can claim any right on the basis of the decision taken by the CBSE authority in such previous year, if any, which is in violation of its own Bye Laws. It would also be unjustifiable, to submit that by appropriate writ, the Court may direct something which is contrary to the provisions of the Bye Laws of the CBSE even though there may be some hardship caused to the students for not granting such prayer.

15. The learned senior counsel for the petitioner has also submitted that since the petitioners and 19 others were allowed to sit in the examination by virtue of the interim direction issued by this Court, the CBSE authority may be directed to conduct the practical examination in respect of those candidates, as, such examination was not conducted and thereafter to declare the results, keeping in view the interest of the students, as otherwise they will loose two valuable years. The learned senior counsel in support of his contention has placed reliance on the decision of the Apex Court in *Rajendra Prasad Mathur (Supra)* as well as *State of Maharashtra v. Vikas Sahebrao Roundale and Ors. (Supra)*.

16. In *Rajendra Prasad Mathur* case the Apex Court has held that the appellants were not eligible for admission in the engineering degree course of Karnataka University and admission was contrary to the ordinance prescribed for the eligibility criteria but at the same time as the appellants have already pursued four years studies pursuant to their admission and as the blame for their wrongful admission lies more upon the Engineering Colleges which granted admission than upon the appellants, the Apex Court allowed those students to pursue with their studies in their respective colleges. The fact in the said case is completely different from the facts of the present case. In the present case it is evident from the statement made in the writ petition that the petitioners and others knew that the respondent No. 3 school not an affiliated school under the CBSE and in spite of such knowledge they got themselves admitted into the said school. Moreover, in that case before the Apex Court the Engineering Colleges were not unaffiliated colleges and the discrepancies were relating to the admission-on the ground that the examination which the candidates in question

passed were not recognized as equivalent to the Pre University Examination of the Pre University Education Board, Bangalore. Therefore, the said decision is not applicable on the facts and circumstances of this case. In *State of Maharashtra v. Vikas Sahebrao Roundale and Ors.* (Supra), the Apex Court has held that no direction can be issued to permit the students of unrecognized institutions to appear in the examination, as that will amount to disobey the law, which is subversive of the rule of law and will be a breeding ground for corruption and feeding source for indiscipline. The Apex Court keeping in view the facts and circumstances of the said case, however, did not disturb the admission of the single student who had passed the examination out of the 129 students who appeared for the examination pursuant to the direction issued by the High Court.

17. In the instant case the petitioners did not sit in the practical examination, which was conducted much prior to the filing of the writ petition, as they were not the students of any affiliated school. Their examination is therefore, not complete even if they appeared in the theory examination of different papers pursuant to the interim direction issued by this Court. Therefore, it cannot be said that they completed their examination. Moreover, as discussed above, the petitioners are not entitled to sit in the examination conducted by the CBSE, as they are not students of any affiliated school. Any sympathy shown to such candidates would be misplaced sympathy as they knowing fully well that the school in question is not an affiliated one took admission in such school. Therefore, they have to face the consequences.

18. The Apex Court in *State of Tamil Nadu and Ors. v. St. Joseph Teachers Training Institute and Anr.* (Supra) has observed that the practice of admitting students by unauthorized educational institutions and then seeking permission for permitting the students to appear at the examination has been looked with disfavour by the Court relying on the decision in *N.M. Nageshwaramma v. State of A.P.* It has also been held that if the permission is granted to the students of an unrecognized institution to appear at the examination it would amount to encouraging and condoning the establishment of unauthorized institutions and the High Court under Article 226 of the Constitution of India should not be frittered away for such a purpose. The Apex Court has further held that the Court cannot grant relief to a party on humanitarian grounds contrary to law and any direction issued by the Court allowing the students of unrecognized and unaffiliated institutions, who are not legally entitled to appear at any examination, to sit in such examination, which would be a clear transgression of the provision of relevant Act and Regulation and also be destructive of rule of law.

19. In *CBSE and Anr. v. P. Sunil Kumar and Ors.* (Supra) the Apex Court has held that to permit the students of an unaffiliated institutions to appear at the examination conducted by the CBSE under order of Court and then to compel the Board to issue certificate in favour of those who have undertaken examination, would tantamount to subversion of law and such order passed by the Court cannot be sustained on misplaced sympathy in favour of the students. The Apex

Court in the said decision has set aside the judgment of the division bench of the Karnataka High Court as well as interim order passed by the learned Single Judge allowing the students to sit the examination and thereafter directing the CBSE authority to issue the certificate on the basis of the result of the examination. Relying on the said decision the Apex Court in *Regional Officer, CBSE (Supra)* has reiterated that it has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim order passed in the petition and in most of such cases it is ultimately pleaded that since the course was over or the results had to be declared, the matter deserves to be considered sympathetically. It has further been observed that Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions and condoning the lapses or over looking the legal requirements in consideration of mere sympathy factor does not solve the problem, rather breeds more violations in the hope of being condoned and it disturbs the discipline of the system and ultimately, adversely affects the academic standards.

20. As discussed above, the petitioners and others having knew that the respondent No. 3 school is not an affiliated school got themselves admitted and therefore they cannot even seek a direction from this Court on the ground of sympathy. It has already been held that the respondent No. 3 being not an affiliated school, to which the petitioners got themselves admitted, cannot claim that the petitioners should be allowed to sit in the examination conducted by the CBSE and any direction issued in that regard would be against the Byelaws of the CBSE and amounts to encourage the violation of the Bye-Laws and would be subversive of the Rules of law. Therefore, the prayer made in the writ petition cannot be granted.

21. In the instant case it is an admitted position of fact that the respondent No. 3 school is not a school affiliated under the CBSE but at the same time they admitted students into the CBSE course. Admittedly the respondent No. 3 school does not fulfill the norms for affiliation as provided in the Affiliation Bye Laws of the CBSE. The respondent No. 3 in the affidavit has made a categorical statement they are not going to admit any student from the present academic year i.e. 2006-2007 and they are closing down the school from this year itself. In view of such categorical statement made by the respondent No. 3 in the affidavit, the CBSE authority is directed to see that no student in the respondent No. 3 school is admitted in CBSE course from this academic year. Though heavy cost ought to be imposed on the respondent No. 3 for admitting students into the CBSE Course without there being any affiliation from the said Board, but because of aforesaid categorical statement made in the affidavit to the effect that they are not admitting any students from this academic year and the school authority has decided to close down the school from this year, coupled with the fact that the petitioners and others took admission in the said school knowing fully well that school is not an affiliated school under CBSE, this Court has decided not to impose any cost on the management of the said school.

22. In view of the aforesaid discussions, I am of the view that the petitioners are not entitled to any relief as prayed for and hence the writ petition is dismissed. However, I left it open to the petitioners and other similarly placed students to approach the CBSE authority to allow them to appear in the final examination to be conducted in the year 2007 and I hope and trust that the CBSE authority will definitely consider their cases favourably and sympathetically keeping in view the fact that these students have already completed two years course.

23. No. Cost.