

(2008) 08 JH CK 0009
In the Jharkhand High Court

Sacred Heart Convent School

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Citation : (2008) 4 JCR 320

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal under Clause 10 of the Letters Patent is directed against the judgment and order dated 23.4.2008 passed in W.P. (C) No. 1913 of 2008 whereby the learned Single Judge disposed of the writ petition with a direction to the petitioners to put all his grievances before the Director, Secondary Education Government of Jharkhand, Ranchi, who shall look into the matter and pass necessary orders. For better appreciation, the judgment dated 23.4.2008 is quoted herein below:

As prayed, petitioner is permitted to add the Director, Secondary Education, Government of Jharkhand, Ranchi, as party respondent No. 4, in course of the day.

It is submitted by Mr. Indrajit Sinha, appearing for the petitioner, that the Government cannot interfere with the school of the petitioner, which is a Non Government Aided Minority School. He further submitted that no objection is to be obtained from the State Government only for the purpose of affiliation with ICSC Board and other than that State Government has got no role to play, but respondent No. 3 Smt. Nirija Kujur, District Education Officer, East Singhbhum, Jamshedpur is interfering with the Administration of the School and is also acting mala fide and has threatened coercive action against the petitioner.

Mr. S. Akhtar, appearing for the State, submitted that at the first instance it will

be proper that the matter is examined by the higher authorities.

In the circumstances, petitioner is given liberty to put all his grievances before the Director, Secondary Education, Government of Jharkhand, Ranchi (respondent No. 4) within two weeks from today, who will look into the matter and pass necessary orders in accordance with law as early as possible, and preferably within a period of four weeks from the date of receipt of such representation.

It goes without saying that if he finds that respondent No. 3 has been acting in mala fide manner, he will take necessary action after hearing her in accordance with law.

Till such decision is taken, no coercive step shall be taken against the petitioner.

It is made clear that this Court has not gone into the merits of the case.

With these observations and directions, this writ petition is disposed of.

2. Mr. Indrajeet Sinha, learned Counsel appearing for the appellant, assailed the impugned order as being contrary to the reliefs sought for in the writ petition. Learned Counsel submitted that in the writ petition, petitioner-appellant challenged the authority of the respondent to interfere with the affairs of the petitioner-school which is a non-Government minority institution, but the learned Single Judge instead of deciding the issue, conferred jurisdiction upon the authority to look into the matter and decide the grievances of the appellant.

3. Learned Advocate General, appearing for the respondent-State, submitted that since the affiliation was granted vide notification by the State of Jharkhand, while issuing No Objection Certificate, various conditions were imposed upon the School, if any complaint is made, the authority of the respondents are entitled to look into those complaints and issue directions to the School for that purpose.

4. In course of argument, both the counsels put reliance on the decision of the Supreme Court rendered in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, .

5. We would first like to discuss about the observations made by the Supreme Court in para-61 of the judgment which reads as under:

61. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged. At the school level, it is not possible to grant admissions on the basis of merit. It is no secret that the examination results at all levels of unaided private schools, notwithstanding the stringent regulations of the governmental authorities, are far superior to the results of the government-maintained schools. There is no compulsion on students to attend private schools. The rush for admission is occasioned by the standards maintained in such schools, and recognition of the fact that State-run schools do not provide the same standards

of education. The State says that it has no funds to establish institutions at the same level of excellence as private schools. But by curtailing the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the State has to provide the difference which, therefore, brings us back in a vicious circle to the original problem viz. the lack of State funds. The solution would appear to lie in the States not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of State-run schools and in subsidizing the fees payable by the students there. It is in the interest of the general public that more good quality schools are established; autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such institutions are established. The fear that if a private school is allowed to charge fees commensurate with the fees affordable, the degrees would be "purchasable" is an unfounded one since the standards of education can be and are controllable through the regulations relating to recognition, affiliation and common final examinations.

In para-65 of the judgment, Their Lordships observed:

65. The reputation of an educational institution is established by the quality of its faculty and students, and the educational and other facilities that the college has to offer. The private educational institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies. It is for this reason than in St. Stephen's College case this Court upheld the scheme whereby a cut-off percentage was fixed for admission, after which the students were interviewed and thereafter selected. While an educational institution cannot grant admission on its whims and fancies, and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons.

6. In the light of the aforesaid observations, we shall now discuss the facts of the case.

7. The appellant-School is an unaided minority school registered under National Commission for Minority Educational Institutions, Government of India and also affiliated with ICSE Board. At the end of the Sessions of 2007-08, an annual

examination was held and the students were promoted on the basis of marks obtained by them. The students who did not obtain the qualifying marks were detained in Class XI. The detained students were advised to change their streams by the School, but they were never forced to do so. However, the appellant was shocked to receive the show cause from respondent-District Education Officer, Jamshedpur alleging that complaints have been received from students regarding collection of fees from Class XI students, but they are being detained in the same class. Pursuant to the aforesaid show cause dated 13.3.2008, the appellant submitted its reply to the concerned respondents stating therein that as per the rules and norms of the Schools, students who continuously fall in the Science subject throughout the year, are detained in the same class. However, the students and their parents are advised to change stream from Science to Commerce or Arts for their continuance. It is alleged by the appellant that vide letter dated 24.3.2008 issued by respondent No. 3, appellant was directed to appear on 26.3.2008 at 3.00 p.m. Thereupon, the appellant replied on 25.3.2008 that on 26.3.2008, ICSE Board examination has to be held in the School, therefore, it is difficult to appear at 3.00 p.m. However, with the same allegations, the appellant was again directed to appear on 29.3.2008. Due to non-appearance of the appellant, respondent No. 3 vide 4.4.2008 finally restrained the appellant from taking admission in Class XI. In reply, the appellant informed the School is affiliated to the ICSE Board of Delhi and is a non-aided institution. The ICSE Board has not imposed any restriction on its affiliated Schools to detain a student in Standard XI. Thereafter, an inquiry committee was constituted against the appellant through publication in newspaper, but no letter was served to the appellant In this regard. Thereafter the appellant preferred the writ petition.

8. On the other hand, the case of the respondents is that on the complaints received from the parents of the students regarding arbitrary action taken by the Principles and other authorities of the Schools, a meeting was called by the Deputy Commissioner, East Singhbhum on 11.1.2008 with the principles of various schools. It is stated that vide Memo dated 4.4.2008, the Deputy Commissioner directed the Principals of the various schools including the appellant not to force the students to select particular stream (subject) at the time of admission in Class XI, failing which N.O.C. issued to the schools concerned, shall be recommended for cancellation by the State Government, because on the N.O.C. issued by the State Government, the schools are affiliated to the ICSE Board. It is stated that under various articles of Bihar Education Code, the District Education Officer is empowered to inspect and give proper direction for maintaining efficiency, even in unaided schools in relation to various subjects including staff, equipment and discipline.

9. From perusal of the annexures to the counter affidavit filed by the District Education Officer, it appears that annexure-A is the complaint made by the guardian against the appellant school stating inter alia that his daughter is a Science student with Physics, Chemistry, Mathematics and Computer as an

optional subject in the Sacred Heart Convent School, Jamshedpur. She could not do well in her previous two term exam due to some unavoidable reasons, but her ward has done drastically well in the final term, but her performance has not been taken into consideration while promoting the student from Class XI to Class XII. In fact, his daughter has been detained in Class XI by the authorities of the School.

10. In course of argument, Mr. Indrajit Sinha, learned Counsel appearing for the appellant-School, on instruction from the school, submitted that the appellant-school has decided not to detain the students in Class XI who did not obtain qualifying marks nor the students will be forced to change their stream while promoting them to Class XII. That was the only grievance made by the parents of the students. In view of the fair stand taken by the School, we do not find any justification in sending the matter to the Director, Secondary Education, Government of Jharkhand for deciding the question with regard to admission or promotion of the students from one class to another class. We must take judicial notice of the fact that private educational institution, specially the schools upto +2 level in the State of Jharkhand, are attained high reputation, inasmuch as students of these private institutions are doing best in the competitive examination and even they are ranking top in the country. It is because of standard of education, these schools are providing to the students. In our conscious opinion, therefore, there should not be any interference in the matter of selection and admission of the students unless the action of the authorities of the schools is arbitrary, discriminatory and violative of Article 14 of the Constitution.

11. Having regard to the facts and of the case and the discussions, made above, the impugned judgment passed by learned Single Judge cannot be sustained in law. The appeal is, therefore, allowed with the aforesaid observations and directions.

Jaya Roy, J.

12. I Agree