
(2008) 06 CAL CK 0035
In the Calcutta High Court
Case No : Writ Petition 840 (W) 2008

Satyabrata Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-06-2008

Acts Referred:

Citation : (2008) 06 CAL CK 0035

Hon'ble Judges : Tapan Kumar Dutt, J

Bench : Single Bench

Advocate : Asit Baran Raut and Mr. A.K. Chowdhury, for the Appellant; U.S. Menon and Mr. Rajeev Kumar Jain for the Respondent Nos. 2, 3 and 4, Mr. Sudip Deb and Ms. Smita Mukherjee for the Respondent No. 6, for the Respondent

Judgement

Tapan Kumar Dutt, J.—The petitioner's son, Mayukh Gupta, was studying in Class-IX in Aditya Academy School at Barasat (Respondent No.6) which is affiliated to the Central Board of Secondary Education at Delhi (Respondent No.2). The said Mayukh Gupta all on a sudden fell seriously ill for which he had to undergo medical treatment and that it was detected that the petitioner's son was suffering from ADHD with Dyslexia and he was under constant medical treatment. The respondent No.2 authorities in recognition of the candidature of the petitioner's son for the CBSE Board Examination (Xth Standard) which was due to be held in the year 2007 issued the Registration Card. The petitioner's said son appeared in the Examination of Class IX and the respondent No.6 upon considering his track record and overall performance declared him to be promoted to Class X of the said school. In Class X of the said school the petitioner's son sat for the Test Examination and the school authorities were satisfied with the results of the petitioner's son and the petitioner's son was selected for appearing in the Board Examination which was due to be held in the year 2007 and the said Mayukh Gupta's name was sponsored by the school authority concerned to the office of the Central Board of Secondary Education. The Central Board of Secondary Education, after considering the case of the petitioner's son, issued the Admit Card in favour of the petitioner's son

mentioning his Roll No. etc. Unfortunately, the petitioner's son could not appear in the Board Examination in 2007 since there was a relapse of his illness. At about that time the petitioner was transferred from Calcutta to Tufangunj and under such circumstances the petitioner's family had to shift from Calcutta to Tufangunj and after obtaining a transfer certificate in favour of the petitioner's son, the said Mayukh Gupta was admitted in Class X in a school at Coochbehar viz. B.D. Jain Modern High School which is also affiliated to the said Central Board of Secondary Education. It appears from the writ petition that such admission took place on April 26, 2007 at the commencement of the academic session 2007-08. The said Mayukh Gupta was regularly attending classes in the said school at Coochbehar and was preparing himself for appearing in the Test Examination for the purpose of finally appearing in the Board Examination which was due to be held in March, 2008. On all a sudden, according to the petitioner, the petitioner's son came to learn from the school authority concerned that the Central Board of Secondary Education has informed the school authority that it has not granted permission for admission of the petitioner's son in the said school in Class-X for AISSE-08 and hence his name would be deleted from the Nominal Roll for AISSE-08.

2. Thus, in such circumstances, the petitioner came up before this Court with the present writ petition. By an order dated 13.2.2008 an Hon'ble single Bench of this Court found that there is a strong prima facie case in favour of the petitioner's son for allowing him to appear in the Board Examination of 2008 and having found that the balance of convenience is in favour of the petitioner's son, the Hon'ble Judge was pleased to pass an interim order to the effect that the CBSE shall, without prejudice to its rights and contentions in the writ petition, issue a provisional Admit Card to the petitioner's son to enable the petitioner's son to appear in the said examination. The Hon'ble Judge was pleased to make it clear that no equity shall be claimed by the petitioner or his son and that it will be open to the CBSE to withhold the results of the petitioner's son.

3. The learned advocates appearing for the respective parties, namely, the petitioner and the respondent Nos. 2, 3 and 4, submit that the petitioner's son has since appeared for the Board Examination of 2008 but the results in respect of such examination, in so far as the petitioner's son is concerned, has not been declared as yet.

4. The petitioner's learned advocate submits that the petitioner has challenged the two letters dated 17th October, 2007 and 22nd November, 2007 being annexure P-7 and P-10 respectively issued by the Central Board of Secondary Education (hereinafter referred to as the CBSE). The CBSE authority by letter dated 17th October, 2007 has questioned as to why the school at Coochbehar has allowed the admission of the petitioner's son in Class-X and in the letter dated 22nd November, 2007 the CBSE has communicated that it has not granted permission for admission of the petitioner's son in the said school in Class X for AISSE-08 and that the name of the petitioner's son should be deleted from the

Nominal Roll of AISSE-08. The learned advocate for the petitioner has submitted that in the facts and circumstances of the present case the CBSE could not have taken such stand. The argument on behalf of the petitioner is that the respondent No.6. having certified and declared that the petitioner's son has passed the Class IX examination and the CBSE having already allowed the petitioner's son to appear in the Board Examination of 2007 and having issued Admit Card in this regard for the said Board Examination of 2007, the said CBSE cannot now turn around and say that the petitioner's son is not eligible to be admitted in Class X. The said learned advocate submitted that it is only because of the relapse of illness of petitioner's son when he was due to appear in the Board Examination of 2007, the petitioner's son could not appear in the said examination. That said learned advocate further emphasized the fact, that being fully aware of the facts and circumstances, the B.D. Jain Modern High School at Coochbehar admitted the petitioner's son in Class-X and thereafter allowed the petitioner's son to appear in the test examination. The petitioner's son succeeded in the said Test examination and thereafter he was due to appear in the Board Examination of 2008. The said learned advocate submitted that at the present juncture it would be only appropriate and proper that the results in respect of the Board Examination of 2008, in so far as the petitioner's son is concerned, should now be declared.

5. The learned advocate appearing on behalf of the CBSE authorities referred to the Examination Bye-laws of the CBSE and drew the attention of this Court to clause 6.4 and 7.3 of the said bye-laws. Clause 6.4 of the said bye-laws stipulates as follows:

"No student shall be admitted or promoted to any subsequent higher class in any school unless he has completed the regular course of study of the class to which he was admitted at the beginning of the academic session and has passed the examination, at the end of the concerned academic session, qualifying him for promotion to the next higher class."

Clause 7.3 of the said bye-laws stipulates as follows:

"Admission to Class X:- As the syllabus prescribed at Secondary level is of two years integrated course, no admission shall be taken in Class X directly. Provided further that admission to Class X in a school shall be open only to such a student who:

(a) has completed a regular course of study for class IX, and

(b) has passed class IX examination from an institution affiliated to this Board.

(c) A student who has completed a regular course of study for Class IX and has passed Class IX examination from an institution recognised by/affiliated to any recognised Board in India, other than this Board, can be admitted to a school only on transfer of the parent(s) or shifting of their families from one Place to another, after procuring from the students the mark sheet and the Transfer

Certificate duly countersigned by the Educational Authorities of the Board concerned. In case of such admissions the schools would obtain post facto approval of the Board within one month of admission of the student."

6. The learned advocate for the CBSE submitted that since the mark sheet of the petitioner's son shows that he has failed in Class IX, therefore, the petitioner's son cannot be admitted in Class X and therefore, he could not have been allowed to appear in the Board Examination of 2008.

7. In the facts and circumstances of the present case the learned advocate for the CBSE authorities does not dispute that the petitioner's son had completed the regular course of study in Class IX, but what he submits is that he failed to pass the Class IX examinations as disclosed by the mark sheet.

8. The present case raises an interesting point for consideration. In this case the respondent No.6 had considered the performance of the petitioner's son in Class IX examinations and thereafter certified that the petitioner's son be promoted to Class X. The learned advocate appearing on behalf of the respondent No.6 has submitted in this regard that an affidavit has been affirmed by one Nirmal Kumar Bose, the Assistant Secretary of the respondent No.6, and a copy of such affidavit being an affidavit-in-opposition has already been served upon the learned advocate for the petitioner. The learned advocate for the petitioner admits such fact. The learned advocate for the respondent No.6 submits that the original affidavit is not presently available with him but a copy of the said affidavit may be kept on record. None of the learned advocates appearing for the other parties oppose to the keeping of the copy of the said affidavit on record. Let the copy of the said affidavit be kept on record. It appears from the paragraph 3 of the said affidavit that the respondent No.6 has taken the stand that the performance of the petitioner's son gradually improved with the improvement of the health of the petitioner's son and he was promoted to Class X after considering the Test record, the performance of the petitioner's son in the examination and the undertaking given by the petitioner and his son that the petitioner's son will do well.

9. Now referring to the said bye-laws it appears that in Clause 7.3 two classes of cases have been contemplated. In one class of cases a situation is contemplated where a student from one school is being transferred to another school in Class X where both the schools are affiliated to the same Board, that is, CBSE. In the other class of cases a situation is contemplated where a student is transferred from a school affiliated to another Board (other than CBSE). Sub-clause (a) and (b) of clause 7.3 refers to the first class of cases mentioned above. Sub-clause (c) of clause 7.3 refers to the second class of cases mentioned above. It is interesting to note that in sub-clause (a) and (b) there is no mention of procuring from the students the mark-sheet, but in clause "(c)" such provision is there. Therefore, the question is : can it be concluded that in a case which falls in sub-clause (a) and (b) which contemplate the first class of cases there is no such requirement. In the petitioner's case, the petitioner's son transferred from

the respondent No.6-school to the school at Coochbehar and both the schools are affiliated to the same Board, that is, CBSE. The annexure P-7 shows that the CBSE has sought for an explanation from the school concerned that how the petitioner's son could have been admitted in the said school. If the bye-laws do not require the post facto approval of the Board in a case where a student is being transferred from one school to another where with the schools are affiliated to the same Board, can such Board require the school concerned to give explanation in the absence of any specific provision in the bye-laws in this regard. Had it been a case where the respondent No.6 was affiliated to a different Board then definitely the question of obtaining the post facto approval from the Board would have arisen. In the present case the learned advocate appearing on behalf of the CBSE Board authorities could not draw the attention of this Court to any provision which requires such post facto approval of the Board when both the schools are affiliated to the same Board. The next aspect of the matter is whether the petitioner's son can be considered to have passed the Class IX examination. The peculiar facts of this case, as already mentioned above, needs no repetition. The respondent No.6 had declared that the petitioner's son had passed Class IX examination and/or promoted to Class X. The CBSE Board also issued the Admit Card in favour of the petitioner's son for appearing in the Board Examination of 2007. Therefore, the CBSE Board did not find at that point of time that the petitioner's son was in any way not qualified to appear in the Board Examination. Thus, according to the CBSE Board, at the point of time when the petitioner's son was due to appear for the Board Examination in the year 2007 found that the petitioner's son is eligible to appear in the said Board Examination. Had it been a case that the production of the mark-sheet was mandatory, in that event the CBSE Board would have insisted upon production of such mark-sheet of the petitioner's son at that point of time. The school authority concerned had declared that the petitioner's son had passed the Class IX which was the very basis for coming to the conclusion that the petitioner's son had in fact passed Class IX and was promoted to Class X. Therefore, one can come to the conclusion that the CBSE Board proceeds on the basis of the decision taken by the concerned school in so far as passing of the class examination is concerned. Had it been otherwise, the CBSE Board would have scrutinised the mark sheet of the petitioner's son before issuing the Admit Card in respect of the Board Examination of 2007, but the CBSE Board did allow the petitioner's son to appear for the said examination. The sub-clause indicated above does not use the expression "pass marks" but uses the words "passed Class IX examination" If the words "pass mark" had been used, it would have definitely brought the mark-sheet into the picture but the words "passed Class IX examination" do not necessarily bring the mark sheet into the picture. A question may arise as to whether it is the certificate of the school authority concerned which should form the basis while considering the question whether a student has passed the examination or not. Here in the present case the school authority concerned has clearly indicated that the petitioner's son had passed Class IX examination and was promoted to Class X. That apart has already discussed

above, clause 7.3 (a) and (b) do not contemplate "mark-sheet." Therefore, it is difficult to say, in the facts and circumstances of the present case, that the petitioner's son had failed in Class IX examination keeping in view the aforesaid bye-laws and the conduct of the parties. The learned advocate for the petitioner submitted in course of his submissions that the school authority concerned has the discretionary power to promote a student from one class to another in certain situations and the school authority, concerned can always exercise such discretion if it is deemed fit and proper. The learned advocate for the respondent No.6 does not dispute the said statement of the petitioner's learned advocate. The learned advocate for the CBSE authority does not admit such submission of the petitioner's learned advocate. Be that as it may, the CBSE did not find anything wrong with the petitioner's son when they issued the Admit Card for the Board Examination of 2007. If one argues that the failure of the petitioner's son in Class IX examination was detected subsequently and, therefore, a decision was taken for not allowing the petitioner's son to sit for the Board Examination of 2008, in that event the next question would be :- What would happen if such detection of failure of a student in Class IX is made by the Board after, let us say, a few years, in a case where the student could not sit for such few years for some reason or the other. To approve of such argument of the Board may entail disastrous results. The question would then be, how can the students be compensated for the negligence of the Board for such a long time.

10. The learned advocate for the CBSE Board has referred to a decision reported in Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, . It appears that the facts and circumstances of the present case are quite different from the facts and circumstances of the said reported case. In the said reported case, the school authority concerned itself declared the petitioner to have failed the examination and the Hon"ble Supreme Court in paragraph 22 of the said reports was pleased to observe that "It is thus clear that, according to Respondent 1 herself, she was declared failed in her examination for Class IX". Thus it is clear that the facts and circumstances of the present case differs in many ways from the fact situation of the said reported case. This Court is of the view that in the facts and circumstances of the present case the said reported decision cannot be of any help to the CBSE Board authorities.

11. In view of the discussions made above, this Court is of the view that the stand taken by the CBSE-respondent authorities cannot be approved and such stand taken by the CBSE respondent authorities is not acceptable to this Court. Since there is no dispute that the petitioner's son has already appeared in the Board Examination of 2008 but the results have been withheld by the CBSE Board authorities, this Court now directs the CBSE authorities to publish the results of the said Board Examination of 2008 in so far as the petitioner's son is concerned. The impugned letters being annexure P-7 and P-10 to the writ petition are quashed in so far as the writ petitioner's son is concerned.

12. The writ petition stands disposed of.