

(2010) 02 CAL CK 0045
In the Calcutta High Court
Case No : Writ Petition No. 250 (W) of 2010

Sudhansu Kumar Ghosh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Citation : AIR 2010 Cal 86 : 114 CWN 393 : (2010) 3 SLR 427

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Milan Bhattacharya and Pulakesh Bajpayee, for the Appellant; Biswaroop Bhattacharya, Manoj Kumar Tiwari, Ranajit Chatterjee and Prasenjit De, for the Respondent

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.—By consent of the parties, this matter is taken up for final disposal under the heading "To be Mentioned" due to urgency as pleaded on behalf of the writ petitioner.

2. The instant application has been filed by a parent of a student who has been pursuing his studies in a school, named, South Point High School. In the year, 2009, the student, Soumik Ghosh, was studying in Class-XII of the said school and had appeared for a pre-selection test held by the school to enable him to appear for the selection test, which was scheduled to be held subsequently, for being selected as a candidate to appear for the Higher Secondary Examination, 2010, conducted by the West Bengal Council of Higher Secondary Education. Although, he passed his pre-selection test overall, he failed in Mathematics, securing 21 marks out of 100 (full marks). From an endorsement made by the class teacher in the pre-selection progress report it is noted that Soumik was weak in Mathematics and should study hard to improve his score. Subsequently, Soumik appeared in the selection test but could not clear it, having failed in four subjects. Thereafter, the student made a representation before the Principal of the said school through his father on 15th December, 2009, which forms the very

basis of filing of the instant writ petition.

3. In the said representation dated 15th December, 2009, the writ petitioner has stated that his son Soumik of Class-XII, E, (Aft.) has failed in four subjects in the selection test for which the school was not allowing him to appear in the ensuing Higher Secondary Examination, 2010. It has been further stated that although the school was considering those students who had either failed in two and three subjects sympathetically, by allowing them for appearing for a re-test and subsequently allowing them to fill-up the form for the Higher Secondary Examination, 2010, so far as Soumik was concerned, the school did not allow him to sit for re-test. In the representation, the writ petitioner has also attributed the unsatisfactory result of Soumik to a "Generalised Anxiety Disorder" (GAD), combined with comorbid depression from first week of August, 2009, though it is also stated that he fully recovered from this episode of psychological problem in the middle of October, 2009. The petitioner has also stated that after the result of the selection test, Soumik was again mentally disturbed, but was devoting himself fully in his studies, to do excellent result in future. In the circumstances, as stated in details in the said representation dated 15th December, 2009, the petitioner made a request before the Principal of the school to kindly treat Soumik as part of the students who had either failed in two or three subjects upon consideration of his illness and past academic career, for the purpose of his selection as a candidate for the Higher Secondary Examination, 2010. A prayer was also made to allow Soumik to sit for the re-test examination, which was scheduled to be held on 4th January, 2010, and to allow him to fill-up the form on 7th January, 2010, for the Higher Secondary Examination, 2010.

4. Upon the writ petition being moved before this Court during Christmas vacation on 30th December, 2009, no interim order was passed and direction for filing of affidavits were given. Aggrieved by the order dated 30th December, 2009, the writ petitioner preferred an appeal before a Division Bench of this Court presided over by the Hon'ble The Chief Justice, which was finally disposed of by an order dated 8th January, 2010, which is reproduced hereinbefore:

In view of nature of the controversy involved in the appeal, instead of disposing of the stay application, we have decided to take up the appeal itself for final disposal by treating the same as on day's list.

Since the re-assessment test has already been held by the school on 4th and 5th January, 2010, it would be too late in the day to entertain the appellant's request to conduct another re-assessment test for him when the last date for sending the examination forms to the Council is 11th January, 2010. On this short ground alone, we are dismissing the appeal without going into any other contentions raised on behalf of the respondents.

The connected application for stay is also disposed of.

5. Subsequently, this matter was mentioned before this Bench by the writ petitioner for early disposal of the writ petition.

6. During hearing of the matter, it transpires that an affidavit-in-opposition has been filed on behalf of the West Bengal Council of Higher Secondary Education and a reply thereto have been filed by the writ petitioner. So far as the school is concerned, being the respondent No. 5 herein, learned advocate appearing on its behalf prays for extension of time for filing affidavit-in-opposition, since the same could not be made ready within time.

7. This Court is of the opinion that there is no requirement for granting any extension of time to the school for using an affidavit-in-opposition since the writ petition can be disposed of even otherwise, on the basis of records and copies of documents annexed.

8. From the narration of facts, as stated earlier, it is patently clear that the writ petitioner has chosen to invoke this Court's high prerogative Constitutional writ jurisdiction based on a representation made by him to the Principal of the concerned school on 15th December, 2009 for sympathetic consideration of his son's case with a prayer to allow him to appear for a re-test and also permit him to fill-up the necessary form to enable him to appear for the ensuing Higher Secondary Examination, 2010. Being aggrieved by the refusal on the part of another single Bench of this Court to pass an ad-interim order, the writ petitioner went up before the Hon'ble Court of Appeal, which passed the order dated 8th January, 2010, reproduced hereinbefore. Even the Hon'ble Court of Appeal refused to entertain the appeal filed by the writ petitioner since re-assessment test had already been held on 4th & 5th January, 2010. The Hon'ble Appeal Court, as will appear from its order, observed that it would be too late in the day to entertain the appellant's request to conduct another re-assessment test, when the last date for sending the examination form to the Council was 11th January, 2010.

9. Today, however, learned advocate for the petitioner, on the basis of a newspaper report, submits that the last date for sending the examination forms to the Council has been extended by the West Bengal Council of Higher Secondary Education till 1st February, 2010, with late fee. I am afraid this does not improve the factual situation, since from the submission made by the learned advocate for the petitioner, it is evident that the last date for sending the examination forms to the West Bengal Council of Higher Secondary Education with late fees has already expired, today being the third of February, 2010.

10. Be that as it may, since I am inclined to dispose of the writ petition finally, the issue that is required to be decided is whether on facts as presented before this Court, a writ would at all lie. The question of passing a final order as prayed for, in my view, could only arise if this Court decides that in such a fact situation a writ is maintainable.

11. After considering the submissions made by the learned advocate for the petitioner and upon perusing the instant writ petition along with its annexures, including the representation dated 15th December, 2009, addressed by the

petitioner to the Principal of the concerned school, it appears all that the writ petitioner has made out before this Court, in order to invoke its high prerogative Constitutional writ jurisdiction, is refusal on the part of the school to consider sympathetically the case of the writ petitioner's son, as stated in details in the said representation dated 15th December, 2009, which forms the genesis of the matter. The learned advocate for the petitioner has not been able to cite any high authority for the proposition that a writ would lie in such a factual situation, as presented before this Court in the instant case. So far as sympathetic consideration is concerned, even from the observation made by the Hon'ble Court of Apical, it appears that the Division Bench refused to entertain the writ petitioner's request since re-assessment test had already been held by the school.

12. Learned advocate appearing on behalf of the West Bengal Council of Higher Secondary Education, being the respondent No. 4 herein, refers to a Division Bench judgment of the Bombay High Court in the case of *Sophy Kelly Vs. The State of Maharashtra and Others*, . Referring to paragraph 25 of the said judgments he submits that the Division Bench of the Bombay High Court, quoting from Halsbury, Third Edition, Vol. 13, page 590 (paragraphs 1241 to 1242) had observed, inter alia, that applying the principles laid-down therein it seemed clear that when a parent got his child admitted to a secondary school, he undertook that the Head Master was at liberty to enforce with regard to the child such rules of the school as were reasonably designed to promote the education of the child and to maintain discipline in the school. He submits that the Bombay High Court had further observed that such rules of discipline, as were reasonably designed to prepare the child for the secondary examination, could be enforced by the Head Master of the school, who was at liberty to do so. The learned Advocate further submits that the Bombay High Court had also observed that under the implied terms of the contract, the Head Master was entitled to withhold promotion of a pupil from one standard to the next, if the pupil did not show satisfactory academic progress. The same right was exercised by the Head Master in respect of pupils in the final standard, by refusing to grant them leave to appear for the S.S.C. Examination, unless satisfactory progress was made by them. The Head Masters claimed the right to judge the academic progress and performance of their pupils before presenting them for the S.S.C. Examination. The learned advocate for the West Bengal Council of Higher Secondary Education, thus, submits that the principles of law laid down by the Bombay High Court are squarely applicable in the facts of the instant case and no case has been made out by the writ petitioner to invoke the writ jurisdiction of this Court. He also refers to a judgment rendered by a single Bench of this Court in the case of *Miss Debopriya Ganguly Vs. State of West Bengal and Others*, , which refers to the Division Bench judgment of the Bombay High Court in paragraph 35.

13. The learned advocate appearing on behalf of the school, being the respondent No. 5 herein, relies on a judgment of the Supreme Court in the case of *Central Board of Secondary Education Vs. Nikhil Gulati and Another*, and

submits that it has been held time and again by the Supreme Court that ineligible student ought not to be permitted under Court's order to undertake Board and/or University examinations, unless the Court could justify its decision on principle and precept. He also relies on another judgment of the Supreme Court reported in C.B.S.E. and Another Vs. P. Sunil Kumar and Others, , which takes into consideration the earlier judgment of the Supreme Court referred hereinbefore.

14. Upon a broad conspectus of the judgments relied on, there appears to be no manner of doubt that once a child is admitted to a school, it is implied and implicit that the Headmaster or the Principal of the school shall be at liberty to enforce, with regard to the child, such rules of the school as are reasonably designed to promote the education of the child and to maintain discipline in the school. The Headmaster/Principal is also entitled to withhold promotion of the pupil from one standard to the next, if the pupil does not show satisfactory academic progress. Similarly, the same right is exercised by the Headmaster/Principal in respect of pupils in the final standard by refusing to grant them leave to appear for the Board Examination, unless such satisfactory progress is made by them.

15. In the facts of the instant case, even the writ petitioner does not dispute that his son has failed to qualify in the selection test held by the school. He himself admits in the representation dated 15th December, 2009 that his son has failed in four subjects in the said selection test. In fact, the entire representation is couched in a tone inviting sympathetic consideration of his son's case by the Principal of the school and is also based on certain medical conditions, as highlighted therein.

16. I am of the opinion that it is entirely for the school to decide whether to allow re-examination/re-test in case of unsuccessful candidates. If the school has not considered the case of the writ petitioner's son favourably, it cannot necessarily mean that the school has discriminated against him. Even from the representation dated 15th December, 2009, it is clear that the writ petitioner was aware that the school was not considering granting of permission for re-test examination for those candidates who had failed in more than three subjects. Such being the position, no case of arbitrariness or discrimination has been made out by the writ petitioner against the concerned school. At this stage, it may be pertinent to quote the observations made by the Supreme Court in Central Board of Secondary Education Vs. Nikhil Gulati and Another, , which reads as follows:

Occasional aberrations such as these, whereby ineligible students are permitted, under Court orders, to undertake Board and/ or University examinations, have caught the attention of this Court many a time. To add to it further, the Courts have almost always observed that the instance of such aberrations should not be treated as a precedent in future. Such casual discretions by the Court is nothing but an abuse of the process more so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as

a precedent. And yet it is repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on principle and precept, it should better desist from passing such orders, for its puts the "Rule of Law" to a mockery, and promotes rather the "Rule of Man".

17. The above observations, in my view, are critical comments and cautions the High Court from passing orders in such cases similar to the one which has been instituted by the present writ petitioner.

18. The writ petition, thus, fails and is hereby dismissed.

19. Since no affidavit in opposition have been filed by the school authority, allegations made in the writ petition, if any, are deemed to be not admitted by them.

20. Although, I am inclined to award exemplary costs, I refrain from doing so since the subject-matter of controversy centres round the academic career of a young student studying in Class-XII, who happens to be the writ petitioner's son.

21. Urgent xerox certified copy of the order, if applied for, shall be given to the petitioner as early as possible.