
(2012) 08 CAL CK 0139
In the Calcutta High Court
Case No : W. P. No. 4734 (w) of 2012

Tara Chand Agarwalla

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

West Bengal Council Of Higher Secondary Education Act, 1975 — Section 21

Citation : (2012) 4 CALLT 703

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Pulakesh Bajpayee, for the Appellant; Ranajit Chatterjee, Prasenjit De For the Council, Mr. Biswarup Bhattacharya and Mr. Monoj Kumar Tewari, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.

1 The petitioner's son was admitted to South Point High School in Class-XI for the academic session 2011-2012 in Commerce Stream. The petitioner's son pursued his studies from Kerala Public School, affiliated to the Council for the Indian School Certificate Examination, New Delhi. The said school was situated at Rairangpur in the State of Orissa. He passed out Class-X examination conducted by the said Council for the Indian School Certificate Examination, New Delhi (ICSE for short). English, Environmental Education, Hindi, History, Civics and Geography, Mathematics, Commercial Studies and Computer Applications subjects having secured 81% marks in total. In the month of November 2011, after having pursued his studies for several months, the school authorities informed that the West Bengal Council of Higher Secondary Education, the respondent no.6 herein, have refused to register the said student as he did not have the Science subject in ICSE. The School Authorities, however, requested the respondent no.6 to consider the case sympathetically and to register the petitioner's son to save his one academic year which he spent in continuing his

studies with the said School. The respondent no.6, however, refused to admit and register as the petitioner passed out Class-X Examination conducted by the said Council without the Science Subject which cannot be treated as equivalent to Madhyamik Examination conducted by the West Bengal Board of Secondary Education.

3. The petitioner being the father and the natural guardian of the said student have filed the instant writ petition praying for a writ of mandamus commanding the respondent no. 6 to issue the confirmation of registration in favour of his son and to issue an exhaustive notification with details of studies for old streams by setting aside the notification dated 11.10.2006 for the purpose of considering the question of equivalents.

4. Before proceeding to record and/or deal with the respective submissions, it would be pertinent to quote the relevant provisions contained in notification no. 185-SE-(HS)/8C-04/06 dated 11th October, 2006 which runs thus:

2. (h) "equivalent examination" means,-

(i) a public examination, by whatever name it is called, instituted by an authority included in Schedule I, the curriculum of which is comparable to the pattern of Secondary Education and which terminates the studies of class X; or

(ii) such other examination as the State Government may, by order, specify as such and which terminates the studies of class X. Explanation I.- An examination passed under any Open School System shall be considered as equivalent examination, if the curriculum of such examination is comparable to the Secondary Education. Explanation II.- For removal of doubts, it is hereby declared that an examination without the paper on Physical Science, Life Science and Mathematics shall not be considered as equivalent examination;

* * *

4. Admission into Class XI.

(1) Save as otherwise provided in sub-regulation (2), sub-regulation (3), sub-regulation (4), regulation 5 or regulation 8, as the case may be, a student, who has passed the Madhyamik Pariksha or equivalent examination, may be admitted into class XI of a recognised Institution within the 31st day of August of the academic session of class XI:

Provided that the Council may, in exceptional circumstances, extend the date of admission: Provided further that no student shall be admitted into class XI of a recognised Institution after the expiry of three consecutive academic sessions of class XI from the date of publication of his result of the Madhyamik Pariksha or equivalent examination.

(2) A student who has passed equivalent examination under any authority not included in Schedule I may, with prior permission of the Council, be admitted into class XI of a recognized Institution, and any such admission without prior

permission of the Council shall be deemed to be invalid.

(3) A candidate having passed the Alim examination from the Board of Madrasah shall be eligible to be admitted in class XI of a recognized Institution-

(a) With non-laboratory based subjects, if he passed such examination with-

(i) English as either a compulsory subject or an additional subject, and

(ii) One other language subject as a compulsory subject or an additional subject, Securing at least 34% marks in the language group and at least 20% marks in each subject of the language group;

(b) with laboratory-based subjects, if he passed such examination with Science as an additional subject securing at least 34% marks in the subject.

(4) A student, who is not a citizen of India and has passed the School Leaving Certificate Examination, may be admitted into class XI of a recognized Institution with the prior permission of the Council and any such admission without prior permission of the Council shall be deemed to be invalid:

Provided that the Council shall, before granting the permission for such admission, determine the equivalence between such examination and the Madhyamik Pariksha, and if considers necessary, it may obtain the specific comments or clarification in respect of the student or his qualification form the High Commission of India:

Provided further that such student shall be require to furnish-

(a) original copy of Indian Citizenship Certificate or Student Visa, as the case may be, to the Council along with the application for obtaining prior permission;

(b) a photo copy of the valid passport along with the application for obtaining prior permission;

(c) original copy of migration certificate along with the application form for certificate of registration.

* * *

9. Registration of students.

(1) No student shall be allowed to appear at the Higher Secondary Examination unless he is registered with the Council.

(2) Every student who has been admitted into class XI of a recognized Institution shall, within the 31st October of the year of admission, apply, through the head of the Institution, for registration with the Council along with such registration fee as may be determined from time to time by the Council:

Provided that the Council may, in exceptional circumstances, extend the date of submission of the forms for the registration: Provided further that a migrating

student applying for the registration shall, in addition to the registration fee, pay such migration fee as may be determined from time to time by the Council:

Provided also that a migrating student who has passed the equivalent examination from any authority other than the authority specified in Schedule II shall, along with the form for the registration, furnish -

(a) a copy of letter signifying the prior permission, as required under these regulations;

(b) the original migration certificate; and

(c) the original registration certificate issued, if any, by the authority referred to in this proviso.

(3) Every head of a recognized Institution shall, within the 31st October of the year of the admission, remit to the Council through a bank draft favouring "West Bengal Council of Higher Secondary Education" payable at "Kolkata", or "Burdwan", or "Medinipore" or "Siliguri", as the case may be, a consolidated sum representing total registration fee and migration fee received from the students accompanied with a filled up challan specified for the purpose by the Council.

(4) The Council shall, on receipt of the particulars of the student along with the fee as stated in sub-regulation (2), make a record of the particulars of the student and being satisfied with his eligibility, allot a registration number for him and issue a certificate or registration, through his head of institution.

(5) Where it is shown to the satisfaction of the Secretary of the Council that a certificate of registration has been lost or destroyed, the Secretary or his authorized officer may, on payment of such fee as may be prescribed by the Council, issue a duplicate certificate of registration.

10. Power to determine equivalence.

The Council shall have power to determine equivalence between any examinations and Madhyamik Pariksha on the basis of -

(a) regularity or otherwise of the course of studies;

(b) subject package of the course of studies;

(c) total marking weightage of the examination; and

(d) such other criteria as may be considered necessary from time to time by the Admission Committee.

5. At the time of admitting the writ petition, an interim order was passed directing the respondent no. 6 to register the petitioner's son provisionally and also to permit him to appear in the examination conducted for the curriculum of Class-XI in Commerce Stream. It was noticed that the student having passed Alim examination from the Board of Madrasah was found eligible to be admitted

in Class-XI provided the Candidate having passed such examination having English as either compulsory or additional subject in case of non-laboratory based subjects and one other language as compulsory or additional subject. However, in case of laboratory based subject, the candidate has to pass examination in Science as an additional subject securing at least 34% marks. A doubt was raised by the court whether the Alim examination conducted by the Board of Madrasah contains a compulsory subjects like Physical Science, Life Science and Mathematics. Upon exchange of affidavits, it reveals that the Alim examination conducted by the Board of Madrasah contains a compulsory subject like Physical Science, Life Science and Mathematics within the Science Group by virtue of notification dated 13.3.1992. The aforesaid facts became relevant for one simple reason that the equivalent examination as defined in Regulation 2(1)h of the said Regulation of 2006 provides that an examination conducted by an authority as included in Schedule I would be treated as equivalent if it contains a compulsory subject like Physical Science, Life Science and Mathematics. Therefore, it cannot be said that the Alim examination conducted by the Board of Madrasah though treated as an equivalent in Regulation 4(3) of the said Regulation without having a compulsory subjects like Physical Science, Life Science and Mathematics.

6. After having considered the aforesaid difficulties, the petitioner restricted his submission on two folds firstly, if the examination terminating Class-X conducted by the Council of Indian School Certificate Examination is treated as equivalent and included in Schedule I to the Regulation, the Board cannot refuse to register the petitioner's son as it does not have the compulsory science subjects; secondly, the Regulation 2006 is liable to be quashed and set aside having being issued without application of mind.

7. On the contrary, the Board submits that the said Regulation was framed in exercise of the Regulation making power as provided under the West Bengal Higher Secondary Education Act and, therefore, cannot be quashed and set aside. It is further submitted that the Board is bound to Act in terms of the said Regulation which specifically provides that unless the examination conducted by an authority included in Schedule I to the said Regulations contains a compulsory subject like Physical Science, Life Science and Mathematics, it cannot be treated as equivalent. Lastly, the Board submits that an Explanation II to Regulation 2(1)h expresses the condition of equivalents which cannot be termed to be unreasonable or irrational.

8. The School Authorities, however, tried to defend its action by supporting the case of the petitioner in contending that in previous occasion, the student having passed class-X examination conducted by the Council of the Indian School Certificate Examination had been registered by the Board and permitted to appear in Class-XII examinations. However, an ignorance is also pleaded that Explanation-II to Regulation 2(1)h of the said Regulation was not known.

9. From the respective submissions, although the court is little sympathetic to

the petitioner's son who have invested more than one year of his academic period in pursuing the study in Class-XI but such sympathy cannot overreached the legal provisions guiding/governing the field.

10. The West Bengal Council of Higher Secondary Education Act, 1975 was enacted for establishment of council for higher secondary education in the State of West Bengal to advise the government on all matters relating to higher secondary education. Section 21 thereof, empowers the Council to direct, supervise and control the Higher Secondary Education by making regulations relating to the different matters as incorporated therein. In exercise of such regulation making power, the Council framed West Bengal Council of Higher Secondary Education (Admission and Allied Matters) Regulation 2006. It is nobodies case that the said Regulation was not approved by the State Government and published in the official gazette as required under Regulation 21(5) of the said Regulations. Therefore, this Court proceeds on the premise that the said regulation is approved by the State Government and have been published in the official gazette.

11. The said Regulation provides the procedure for admission of the students in Class-XI but also regulates the registration and the eligibility criteria for different streams. Madhyamik Pariksha has been defined in Regulation 2(J) to mean the public examination held terminating the studies of Class-X. The recognized institution is defined to mean an institution recognized by the Council under the provisions of the Act. The student who passed Class-X Examination may be admitted to Class-XI in a recognized institution provided he passed the Madhyamik Pariksha or equivalent examination. The equivalent examination as defined in the said regulation means a public examination conducted by an authority as specified in Schedule I to the said regulation provided the curriculum whereof is comparable to the pattern of secondary education. Explanation II inserted therein abundantly makes clear that the examination without the paper on Physical Science, Life Science and Mathematics shall not be considered as equivalent examination. There is an embargo created in Regulation 9 to allow the student to appear at the Higher Secondary Education unless he is registered with the council. Whereas, Regulation 10 empowers the Council to determine equivalence between any examinations and Madhyamik Pariksha on the basis of regulatory or otherwise of the course of the studies; subject package of the course of studies; total marking weightage of the examination and such other criteria as may be considered necessary. Although, the public examination conducted by the Council for the Indian School Certificate Examination as included in Schedule I is treated as equivalent to Madhyamik Pariksha but Explanation II clarifies that such examination must have the compulsory subject of Physical Science, Life Science and Mathematics. Unless, such conditions exist in the examination conducted by an authority included in Schedule I, thereto, it cannot be treated as equivalent. My endeavour has failed to find out that the said regulation is made without the power being conferred by the law. The power to make the regulation emanates from the regulation making power conferred u/s

21 of the West Bengal Council of Higher Secondary Education Act, 1975. The explanation appended in the provision explains the meaning of the word contained therein and is treated as a part and parcel of the enactment. It promotes the object for which it is inserted and made applicable to clarify the diverse situation and circumstances. It is added to include something within or to exclude something from the ambit of the main provision. In G.P. Singh's Principles of Statutory Interpretation, Eighth Edition at page 186, the significant role which the explanation played in the field of interpretation of statute is narrated in these words:

An explanation may be added to include something within or to exclude something from the ambit of the main enactment or the connotation of some word occurring in it. Even a negative explanation which excludes certain types of a category from the ambit of the enactment may have the effect of showing that the category leaving aside the excepted types is included within it. An explanation, normally, should be so read as to harmonise with and clear up any ambiguity in the main section and should not be so construed as to widen the ambit of the section. It is also possible that an explanation may have been added in a declaratory form to retrospectively clarify a doubtful point in law and to serve as a proviso to the main section or *ex abundanti cautela* to allay groundless apprehensions.

12. On the discussion as aforesaid, the conclusion is inevitable that unless the examination conducted by an authority included in Schedule I to the said regulation contains a mandatory subject like Physical Science, Life Science and Mathematics, it cannot be treated as an equivalent to Madhyamik Pariksha conducted by the West Bengal Board of Secondary Education. The respondent no.6, therefore, is not unjustified in refusing to register the petitioner's son. This court finds that the School Authority should be more vigilant in admitting the student in future before allowing the student to pursue the study for a considerable period of time. The petitioner's son has invested more than one year of his academic period fruitlessly because of the fault of the school authorities. This may result harshly upon the petitioner's son but the law is required to take its own course as there is no scope for sympathy which runs counter to the substantive provision of law. Furthermore, the court should not direct the statutory authorities/authorities/government instrumentalities to act contrary to the provision of law.

13. The writ petition is thus devoid of merit and is accordingly dismissed. The provisional registration of the petitioner's son stood cancelled. The petitioner or his son is at liberty to initiate an appropriate proceeding for compensation if so advise for such action of the school authorities.

14. However, there shall be no order as to costs.

15. Urgent photostat certified copy of the judgment, if applied for, be given to the parties on priority basis.

Harish Tandon, J.

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16. After the delivery of the judgment, the learned advocate appearing for the School Authorities, however, prays for stay of operation of this judgment. The prayer is considered and is rejected.