

(2002) 07 CAL CK 0062

In the Calcutta High Court

Case No : M.A.T. No. 1783 of 2002 and C.A.N. No. 5159 of 2002

The Managing Committee, Nangi High School and Another	APPELLANT
Vs	
Shankar Pal and Others	RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

West Bengal Primary Education (Amendment) Act, 1980 — Section 22
West Bengal Primary Education Act, 1973 — Section 98

Citation : (2002) 07 CAL CK 0062

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Jayanta Kumar Biswas, J

Bench : Division Bench

Advocate : B.R. Bhattacharya and Mr. Dilip Kumar Chatterjee, Saibal Acharya, for the Appellant; S.K. Panja and Mr. T.P. Halder for Respondent No. 1, Mrs. Ashalata Ghosh for Respondent No. 12 and Mr. Rabilal Moitra, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Kumar Mathur, C.J.

1. This is an appeal directed against the order dated 22nd May, 2002 passed by the learned single Judge whereby the learned single Judge has allowed the writ petition and directed Respondent Nos. 5 and 6 to admit all the willing successful student of the Nangi High School (primary section) to class V of the Nangi High School (secondary section) as they have been promoted to class V. He further directed that after admission of these students, if vacancy remains, it will be open for the management to hold test for admission to class V of the students of other schools. Aggrieved against this order the present appeal has been filed by the management.

2. The brief facts which are necessary for disposal of the appeal are that some of the guardians of the students who are studying in Nangi High School (Primary section) filed the present writ petition. These students successfully completed their examination of class IV and they were to be admitted to class V of the Nangi High School (Secondary section), but the management insisted for a test

for admission of these students along with the students coming from other schools. This action of the management for holding admission test for the students of Nangi High School (Primary section) for admission in class V of the Nangi High School (Secondary section) was challenged by the guardians of the wards who were studying in Nangi High School (Primary section). Their grievance was that since these students are students of Nangi High School (Primary section), therefore, after their successful completion of class IV studies they must be admitted to class V as a matter of routine and they should not be subjected to test, as both the schools are integrated schools.

3. Therefore, the question is whether the students of the primary section are entitled to be admitted to the secondary section of Nangi High School as a matter of course or it is open for the management to hold admission test for the students of Nangi High School (Primary section) along with students coming from other schools. The petition was contested by the Respondent Nos. 5 and 6 and they have denied the allegations that it is an integrated school and stated that the primary section and the secondary section of the school are being managed by different bodies. It was contended that the primary section is governed by the West Bengal Primary Education Act, 1973 (hereinafter referred to as the Act of 1973) and the secondary section is governed by the West Bengal of Secondary Education Act, 1963. It was stated that both the schools are separate, independent entities and they are not integrated as alleged by the writ petitioners. It is also pointed out that the sources of fund for the management of both the schools are also different and, therefore, it cannot be said that they are integrated one; and therefore, the students who have passed from the primary section, that is class IV, cannot be admitted in the secondary section as a matter of course. The learned single Judge after examining the matter at length took the view that, on the basis of the materials placed before him, the primary section and secondary section of the school formed an integrated one; and once a student is admitted to the primary section he can study there upto class XII and he cannot be put to an admission test by the management. Aggrieved against this order the present appeal has been filed by the management.

4. We have heard learned counsel for the parties and perused the records. The first and foremost question is what are the provisions of the Acts which govern these schools. The primary education in the State of West Bengal is fully financed by the State. The primary education in the State of West Bengal is governed by the Act of 1973. After coming into force of the Act of 1973 the State Government has issued a notification dated 24th September, 1990 wherein it was provided that:

After careful consideration of the matter, the Governor has been pleased to advise that the management and control of all the recognised primary schools within the Calcutta Municipal areas, now under the direct management of District Inspector of Schools (PE), Calcutta, the pay and allowances of which are borne entirely by the State Government, be taken over by the Calcutta Primary School

Council in terms of the provision of section 98 of the West Bengal Primary Education Act, 1973 as amended by section 22 of West Bengal Primary Education (Amendment) Act, 1980. Similar primary schools under the direct management of the District Inspector of Schools (Primary), the entire authorised expenditure of which is borne by the State Government in other Districts for which a District Primary School Council has been set up, be similarly taken over by the District Primary School Council concerned u/s 22 of the West Bengal Primary Education (Amendment) Act, 1980.

5. Therefore, by virtue of this notification issued by the State Government, it is apparent that by virtue of section 22 of the West Bengal Primary Education (Amendment) Act, 1980 all the recognised primary schools within Calcutta Municipal area have been taken over by Calcutta Primary School Council and all the District recognised primary schools have been taken over by the concerned District Primary School Councils. Therefore, it is clear that the entire management of the primary schools in all the Districts including Calcutta vested in the Government and the entire management of the recognised schools of the District including Calcutta is being done by the State through its agencies. By virtue of the Act of 1973 the primary education is being regulated by the State through its instrumentalities. "Primary Education" has been defined in section 2(xvii) of the Act of 1973 which reads as under:

(xviii) "primary education" means such elementary education as is imparted through a primary school.

6. "Primary School" has been defined in section 2(xviii) of the Act of 1973 as under:

(xviii) "primary school" means a school or a department of a school set up under this Act for imparting such primary education as the State Government may prescribe and includes a primary school or a junior basic school recognised under this Act and in existence on the date of coming into force of the West Bengal Primary Education (Amendment) Ordinance, 1996.

7. Section 3 contemplates establishment of West Bengal Board of Primary Education. Its composition has been detailed in the subsequent sections. Section 19 lays down the power and functions of the Board. It lays down that it shall maintain a register of primary schools and regulate the curriculum, syllabus, etc. It also lays down that it shall exercise general supervision and control over the work of the Primary School Council. It also lays down that they will administer their funds also. Section 37 contemplates establishment of District Primary School Councils. After the Apex body, West Bengal Board of Primary Education, District Councils known as District Primary School Councils have been set up u/s 37 of the Act of 1973 at the various Districts. These Councils regulate all the schools of the District and their powers and duties have been detailed extensively u/s 60 of the Act of 1973 which lays down that it shall maintain a register of all the schools within their jurisdiction and they will manage these primary schools

in the District and recognition and non-recognition of such primary schools and the entire management of these schools of the whole District will be managed by them including finance. Section 67 of the Act of 1973 provides for constitution of certain committees like; (1) Staff Selection Committee, (2) Finance Committee, (3) Discipline Committee, (4) Academic Committee, (5) Development Committee and through these committees they manage all these primary schools in the District.

8. This survey of the provisions of the Act of 1973 was undertaken in order to understand the position of the primary education in the entire State of West Bengal. Another peculiar feature of the primary education in West Bengal is that entire primary education in the State of West Bengal has been made free and compulsory. Section 79 provides for preparation of scheme and after framing of the scheme and establishing all the primary schools, no school established under such scheme in the area shall charge any fee from any student attending the primary school in such area managed or aided by the Primary School Council. It also lays down that primary education shall continue to be compulsory and no fee shall be charged by any primary school under public management in the area in which primary education was declared compulsory under the Bengal (Rural Primary Education Act, 1930.

9. Apart from this an obligation has been cast on the guardians also that they will assist the Council for preparation of the list of children under sections 84 and 86 of the Act of 1973. It is an obligation on the part of the guardians to furnish all the information so as to prepare a list. Section 87 of Act of 1973 says that it will be the duty of the guardians to send his children to primary school. Section 88 of the Act of 1973 contemplates that if the welfare committee has reason to believe that the guardian of a child has failed to cause the child to attend a primary school without any reasonable excuse then the welfare committee may make an order directing the guardian to cause such child to attend a primary school on and from the date specified in the order. Section 89 of the Act of 1973 lays down the penalty for failure to obey order for causing attendance of a child in a primary school.

10. These are the main features of the Act of 1973 making necessary provisions for the primary schools, their management and enforcement of the attendance of the child to the school in that area.

11. As against this Act of 1973, West Bengal of Secondary Education Act, 1963 (hereinafter referred to as the Act of 1963) also contemplates the establishment of West Bengal Board of Secondary Education and forming of the regional councils and their various duties which have been assigned to the Board and regional councils and to supervise the management of these schools. The present secondary school is a Government aided school and the recruitment, finance and management are governed by the rules framed under the Act of 1963. The primary duty of the Board is to advise the State Government on all matter relating to secondary education and the Board is to function through various

committees. Section 45 of the Act of 1963 says that the State Government has the power to frame Rules. Section 47 of the Act of 1963 lays down that the Board shall be guided by the directions issued by the State Government from time to time. Section 48 of the Act of 1963 contemplates that the Government has power to issue order for removing difficulty. In exercise of power u/s 45 of the Act of 1963 the State Government has framed rules known as Management of Recognised Non-Government Institutions (Aided & Unaided) rules, 1969 (hereinafter referred to as 1969 rules). According to these Management Rules, the management of Government schools will be done through the managing committees as defined in section 2(c) of 1969 Rules. Rule 6 of the 1969 Rules provides for composition of the committee of an institution other than that sponsored by the State Government. Rule 6A of the 1969 Rules lays down the manner of formation of committee. A detailed procedure has been laid down for conduct of the business of the managing committees. Rule 28 of the 1969 Rules lays down the powers of the committee. Rule 30 of the 1969 Rules provides for an Academic Council. Such Academic Council is to be constituted by the institution consisting of the Head of the Institution, Assistant Headmaster or the Assistant Headmistress, as the case may be, and not more than 3 members elected from amongst the members of the teaching staff including the Librarian and the Assistant Librarian where there is one, working against sanctioned posts or sanctioned additional posts for not less than two years. The Head of the Institution and the Assistant Headmaster or the Assistant Headmistress, as the case may be, shall be the President and the Secretary of the Council respectively. Sub-rule (3) of Rule 30 of the 1969 rules lays down the functions of such Academic Committee, which reads as under:

30. Academic Council.-(1) xxx

(3) The council may discuss matters connected with (i) admission, (ii) promotion, (iii) selection of books, (iv) time table of school hours, and (v) measure relating to the improvement of teaching and co-curricular activities. The Head of the Institution shall, ordinarily, be guided by the advice of the Council in matters specified above. But the Head of the Institution may, for reasons to be recorded in writing, overrule the advice of the Council, in which case any member of the Council who may be in disagreement with the decision taken by the Head of the Institution, may refer the matter to the Committee whose decision thereon shall be final.

12. As per sub-rule (3) of Rule 30 of the 1969 Rules, the entire academic field is left with this Academic Council. They can decide how admission shall be made to the school. They are also entitled to take decision with regard to promotion, selection of books, time table of school hours, and measures relating to the improvement of teaching and extra curricular activities for the school. It is only the Head of the Institution who can overrule the decision of this Committee. Therefore, this scheme of the Rules which is relevant for our purpose makes a complete dichotomy between two institutions i.e. Primary and Secondary. From

this legal background both the institutions that is the primary section and the secondary section are separate and independent bodies. It is not that the Academic Council of the secondary section can direct the management of the primary section or vice versa. The establishment of the primary section and their curriculum and their admission, etc. are regulated under the Act of 1973 and it is essentially under the State, whereas the management of the Government aided schools vested in the management as constituted under the Management Rules that is Rules of 1969 and these managing committees are the authorities so far as the management of the Government aided school are concerned, subject to any direction by the Board or the State. Therefore, jurisprudentially speaking the secondary schools are autonomous bodies in themselves and they regulate their own business like, admission, promotion and other curriculum activities of the schools to which no one else can regulate subject to the orders of the Board or the State Government. Therefore, to say that the primary section is integrated with the secondary section is far from correct and simply because there might be a private arrangement between the primary and the secondary sections, that will not change their basic character. Legally speaking they are two separate institutions and they cannot be said to be integrated. It is a different matter that a primary school may be running in the same campus with a secondary school and some arrangements have been made by the two, but legally speaking both are independent institutions and they cannot be said to be integrated with each other. Various documents have been produced before us by the writ petitioners to show that the primary section is integrated with the secondary section. They are all irrelevant and they have no bearing on the subject when legally both are independent institutions. It may be that one institution seeks help from another institution and vice versa but that will not change the legal character of both the institutions. Various documents have also been referred to by both the parties to justify that one institution has relation with another and vice versa. That may be so, but legally speaking, that has no relevance for determination of the question that whether these two institutions are integrated with each other or not. They are two independent institutions, they can frame their own rules for their guidance and conduct of their business subject to any direction issued by the Board or the State Government. The learned single Judge has referred to various documents to come to the conclusion that these two institutions are integrated with each other and on that basis the learned single Judge has directed that the students studying in the primary section should not be subjected to admission test for admission in the secondary section. The view taken by the learned single Judge is dehors the legal position, as we have already discussed above. Establishment of both the institutions are under two separate Acts, therefore, even if some documents have been referred to show that one school is taking help of another school for one reason or other, that will not change the legal character of these institutions. Therefore, no purpose will be served by referring to those documents which have been referred to by the learned single Judge. However, Mr. Bhattacharya, the learned counsel for the appellant has submitted that for the last 30 years the school is putting all the students to admission test

for admission in class V. That may be so, but as we have already examined the matter from legal aspect and we are satisfied that these two institutions are independent of each other. Therefore, the documents showing instances of taking mutual help or conducting programmes mutually will not be decisive of the matter on the face of the present state of legal position.

13. In this connection reference was made to a Division Bench decision of this Court in the case of *Brahmo Balika Shikshalaya and Another Vs. Debasish Kar Gupta and Another*, wherein the Division Bench of this Court on the basis of the facts of the case took the view that since both the schools were integrated, therefore, the students passing from the primary section should be admitted to the secondary section. It was also observed in para 11 of the judgment that there was no doubt that the Respondent No. 4 had been managing the affairs of all sections of the said school. In that light the matter was decided on the questions of fact. But we have already taken the view that both the institutions in this case are legally independent and constituted under the Acts of 1973 and 1963 and therefore, there is no co-relation between them. They are independent institutions and each one of them is free to frame their own rules for admission. The view taken by the Division Bench on the questions of fact of that case cannot be binding on his Bench. More so, it may also be relevant to mention here that a SLP has been filed against the said judgment and the same is pending before the Apex Court.

14. In another unreported Division Bench judgment of this Court rendered in the case of *Kalyani University Experimental High School, Kalyani, Nadia & Ors. v. Sri Sadhan Roy & Ors.* (in APOT No. 368 of 2000 decided on 17th May, 2000), in which one of us was a party, a different view was taken on the question of fact that at the time of establishment of Kalyani School it was clearly laid down by the Government that there would be two independent institutions. That case was decided on the basis of facts and the view was taken because of the fact that at the time of establishment of the schools, that is primary and secondary schools, they had been bifurcated and they were independent of each other and therefore, the admission to the secondary section from the primary section could not be said to be a matter of course; and the action of the secondary section for conducting the test for admission to class V was upheld. Against this order a SLP was filed before the Apex Court and the same was dismissed. Therefore, both these Division Bench judgments were essentially decided on the questions of fact; and the legal aspect which we have already examined above in this case was never examined at length in those judgments.

15. Reference was also made to a decision of the Apex Court in the case of *The Principal, Cambridge School and another Vs. Ms. Payal Gupta and others*, . This case was decided on the provisions of a particular Act and para 7 of the judgment makes it very clear that the Apex Court after examining the scheme of the Act and Rules found that school in that case was same and one from class I to secondary class. It was observed:

The scheme of the Act and the Rules made thereunder and a combined reading of sections 16(3), 28(2)(q) and Rules 135, 137 and 138 will to show that once a student is admitted to a school at the same admission continues class after class until he passes the last examination for which the school gives training and no fresh admission or readmission is contemplated from one class to the other. Therefore, in a Higher Secondary School such as the one in question, the examination of tenth class cannot be regarded as a terminal examination for those who want to continue their study in eleventh and twelfth classes of the said school. No separate criteria has been laid down in the rules for the students passing class X and wishing to continue their studies in eleventh and twelfth classes.

16. Therefore, after examining the scheme of the Act and the Rules their Lordships decided on the facts of that case and came to the conclusion that in a school which has primary, secondary and higher secondary sections, a student who has got admission in class I can continue his studies in that school until he passes the last examination. Therefore, this case also does not help the writ petitioners in any manner.

17. Our attention was also invited to an unreported single Bench decision given in case of *Somenath Pal v. State of West Bengal* (W.P. No. 910(w) of 2001 decided on 16.3.2001, Cor: P.K. Samanta, J.) in which the learned single Judge has held that the secondary schools are well within their right to lay down norms for admission in class V and we endorse the view taken by the learned single Judge.

18. Reference was also made to a circular issued by the Education Directorate, Government of West Bengal dated 22nd/23rd August, 1974. In the last line of the circular it was clearly mentioned that "the Headmasters of Secondary Schools may take admission test, if they deem it fit". Whether this communication was there or not, that will also not make any difference, as we have examined the legal aspect of the matter and we are of the opinion that in view of the scheme of the things both the schools are independent institutions and they are free to frame their own policies subject to respective statutes; and the mutual arrangement of one school with the other simply will not make them integrated and it is not correct to say that the students who are studying in the primary section should not be subjected to admission test for getting admission in the secondary school.

Therefore, in view of the above discussion we are of the opinion that the view taken by the learned single Judge appears to be incorrect and we allow the appeal, set aside the order of the learned single Judge and dismiss the writ petition. It is open for the secondary school to lay down such norms as they may deem fit for admission in the secondary school. Thereof will be no order as to costs.

J.K. Biswas, J.

18. I agree.