

(2002) 07 CAL CK 0072

In the Calcutta High Court

Case No : M.A.T. No"s. 308, 309, 338 and 339 of 2002

West Bengal Board of Secondary Education and Others

APPELLANT

Vs

Subir Dutta and Others, Billamangal Hazra and Others,
Prasenjit Ghosh and Others and Bholanath Mukherjee and
Others

RESPONDENT

Date of Decision : 01-07-2002

Acts Referred:

Citation : (2002) 3 CALLT 179

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

Bench : Division Bench

Advocate : B.R. Bhattacharya and Tulsidas Maity, for the Appellant; Subrata Bose, Gobinda Chowdhury and Nabanita Pal for Respondent Nos. 1 to 47 in M.A.T. No. 338 of 2002, Suprakash Banerjee and Arati Sircar for Respondents Nos. 48 to 50 in M.A.T. No. 338 of 2002, Mashu Kanta Moitra, Amitava Pain and Subhrangshu Dutta for Respondent Nos. 1 to 50 in M.A.T. No. 339 of 2002, Shyamal Kr. Roy, for Respondent Nos. 53 to 55 in M.A.T. No. 339 of 2002; Jyotirmoy Bhattacharya, Tarun Kiran Moitra and Niranjana Panja for Respondent No. 1 in M.A.T. No. 308 of 2002 and for Respondent Nos. 1 to 4 in M.A.T. of 309 of 2002 and Tapas Lal Mukherjee, in M.A.T. No. 309 of 2002, for the Respondent

Judgement

J.K. Biswas, J.—Since the relevant facts as also the questions of law are identical in all these four appeals, we have heard them analogously; and we propose to decide them by this common judgment.

2. These four appeals arise out of four writ petitions filed by and on behalf of 102 students of four secondary schools recognized by the appellant Board. The appellant Board had refused to register the students' names for allowing them to appear at the Madhyamik Pariksha (Secondary Examination), 2002 from the said four schools. The ground was: the students had earlier got their names registered for the said examination from some other schools. This dispute led to the filing of the writ petitions.

3. In writ petition Nos. 18220(W) of 2001 and 18221(W) of 2001 a learned Judge

of this Court passed two identical interim orders, both dated 9th January 2002, and those have been impugned in M.A.T. Nos. 308 of 2002 and 309 of 2002 respectively. Another learned Judge of this Court by one judgment and two final orders both dated 29th January 2002, allowed the writ petition No. 19523(W) of 2001 and 19524(W) of 2001, and the respective appeals against said final Orders are M.A.T. Nos. 338 of 2002 and 339 of 2002.

4. Both by the impugned interim and final orders the appellant Board was directed to register the students' names and allow them to appear at the said examination. Hence the appeals.

5. Writ petition No. 18220(W) of 2001 was filed by one Subir Dutta. His daughter, Susweta Dutta had been reading in class IX of "Multi Purpose Government Girls" School" at Alipore, Kolkata-700 027. It was one of the secondary schools recognized by the appellant Board. In the annual examination for promotion to class X the student failed. She took school leaving certificate. Then took admission to class X in "Sahapur Girls" School" at 20, Joytish Roy Road, New Alipore, Kolkata-700 053. Her registration sought from the latter school was refused by the appellant Board.

6. Writ petition No. 18221(W) of 2001 was filed by 4 (four) guardians on behalf of their respective wards. The four students in this case also had been reading in class IX of said "Multi Purpose Government Girls" School" at Alipore, Kolkata-700 027. They failed to get promotion to class X. Consequently they also took school leaving certificates, and then took admission to class X in "Deshbandhu Balika Vidyalaya" of 58/A, Sadananda Road, Kolkata-700 026. Their registration sought from the latter school was also refused by the appellant Board.

7. Writ petition No. 19523(W) of 2001 was filed by 47 (forty seven) students. They had been reading in class IX of several schools - [names whereof have not been disclosed]. In annual examinations for promotion to class X they failed, and then obtained school leaving certificates. Thereafter, they took admission to class X of "Howrah Adshaya Sikshayatan" at 1, Jaynarayan Santra Lane, Howrah. Appellant Board refused to give registration to these students from the latter school.

8. Writ petition No. 19524(W) of 2001 was filed by 50 (fifty) guardians on behalf of their respective wards. The 50 (fifty) students of this case also had been reading in class IX of several schools (names whereof have not been disclosed). Being unsuccessful to get promotion to class X they too obtained school leaving certificates from their respective schools. Then they took admission to class X in "Binodini Balika Vidyalaya" at 1, Jaynarayan Santra Lane, Howrah. The latter school sought for the student's registration. Appellant refused to give the same.

9. In all the cases it was alleged that the schools had admitted the students to class X on their being successful in admission tests; and that the schools had represented that the admission was permissible and lawful in view of appellant Boards' circular/order No. 5/135 dated 19th January 1987. It was contended

that for the schools" fault the students should not suffer and they should be allowed to sit for the Examination.

10. In the cases where final orders were passed, the appellant Board contested the cases without filing any opposition. The schools appeared and admitted the allegations made in the writ petitions.

11. In the circumstances the learned Judge who has allowed the two writ petitions, has recorded his finding to the following effect. Although the school authorities were not right in admitting the students in class X by making a representation that such admission, upon successful performance in admission test, was valid in view of the policy of the Board contained in circular dated 19th January 1987; the students who were admittedly not at fault should be allowed to appear at the Examination. The learned Judge placed reliance on the decisions of the Apex Court in the case of *Rajendra Prasad Mathur v. Karnataka University* 1986 SCC 740 and *Maharshi Dayanand University v. M.L.R. Saraswati College of Education*. : (2000)7SCC746 .

12. It has been contended on behalf of the appellant Board that the schools having admitted the students in violation of the rules and procedures for admission into recognized secondary schools, there was no question of registering the names of such students for allowing them to sit for the Examination. According to appellant Board the students were required to sit for the Examination from the schools wherefrom they had obtained the school leaving certificates as their names had already been registered with the appellant Board from those schools. The contentions have been supported by the decision in the case of *University of Calcutta and Ors. v. Amit Jalan and Ors.* 2000(1) CHN 668 (DB).

13. On behalf of respondents the impugned orders have been supported by contending that since the students did not commit any fault, they should not get the ultimate punishment. Reliance has been placed on the decisions in the cases of "*Rajendra Prasad Mathur v. Karnataka University* 1986 SCC 740 ; *A. Sudha Vs. University of Mysore and Another*, ; *D.B. Council of H.S. Edu. v. Tapan Kumar Das and Ors.* 1988(2) CLJ 197 (DB); *Andhra Kesari Educational Society Vs. Director of School Education and Others*, ; and *Maharshi Dayanand University v. M.L.R. Saraswati College of Education*, : (2000)7SCC746 .

14. We find that admittedly the four schools by making misrepresentation admitted the students to class X when they could be admitted to class IX only. The appellant Board by circular No. S/851 dated 2nd December 1988 communicated to the Heads of all recognized Secondary Schools the rules and procedures which were to be followed from said 2nd December 1988 in regard to admission into such schools. The said rules and procedures clearly provided that admission to class X would be permitted only on the basis of a transfer certificate from class X of a recognized school. This being the position there was no just reason for the schools to admit the students to class X when they produced

transfer certificates from class IX of other recognized schools. The representation made by the schools that in view of appellant Board's circular No. S/135 dated 19th January 1997 the students could be admitted to class X on being successful in admission test, cannot be said to be a bonafide one. We so hold because from 2nd December 1988 no rules and procedures could be followed by the schools except the ones contained in the said circular No. S/851 dated 2nd December, 1988. The school have not come out with a case that the said circular No. S/851 was not within their knowledge at the time of giving admission to the students.

15. The relevant circular dated 2nd December, 1988 is reproduced hereunder.

West Bengal Board of Secondary Education 77/2, Park Street, Calcutta 700 016
Circular No.S/851 Dated Calcutta, the 2nd December, 1988 Re: Admission, Late Admission, Break of students and Re-admission

The following rules and procedures should henceforth be followed in regard to admission into recognised secondary schools.

Consequently upon the decision to start the academic session from 1st May instead of 1st January, this circular is issued in suppression of all other previous Circulars regarding admission of students.

(1) No first admission in a recognised secondary school shall be allowed to any class higher than class IX.

(2) Cases of first admission upto class IX made by 15th July need not be reported to the Board.

First Admission

(3) First admission upto class IX made between 16th July and 15th September must be reported to the Board in the prescribed form and with requisite fee of Rs. 5/- only for approval.

(4) First admission, either to class IX or to any lower class, after the 15th of September is, in no case, permitted.

Admission on Transfer

(5) All admissions upto class IX on production of transfer certificates from recognised secondary schools are subject to the following conditions:

(i) that the head of the institution where such admission is sought, finds the pupil fit for admission to the class in which he has been reading or to which he has been promoted,

(ii) that such admission is sought within one month from the date of discontinuance of studies of the pupil concerned but within 15th September.

Late Admission

(6) Admission upto class IX on transfer may be after 15th September, till 15th

December but in such cases an application together with a late fee of Rs. 5/- per students should be forwarded to the Board by the head of the institution with his/her recommendation for approval of the Board.

No admission upto Class IX on transfer should be made after 15th December.

(7) Admission of ward(s) of Government employee on transfer may be made beyond 15th September till the 1st day of February but not later.

In such cases an application together with a late fee of Rs. 5/- only per student and an attested xerox copy of Transfer Order in respect of the Government employee concerned should be forwarded to the Board by the head of the institution concerned with his/her recommendation within seven days from the date of admission for approval of the Board.

Break in the Period of Studies

(8) If a pupil, coming with a transfer certificate from a recognised secondary school, fails to get himself/herself admitted into another recognised school within one month from the date of discontinuance of his/her studies in the former recognised school, the head of the institution may condone the break of study upto three (3) months without referring the case to the Board and admit the pupil within 15th September, if otherwise found in order. But if such a pupil fails to get himself/herself admitted within the said period of three months, the case should be referred to the Board for condonation of break in the period of studies. Application for the purpose must be made in the prescribed form along with a fee of Rs. 5/- only and should be forwarded to the Board by the head of the institution intending to admit the pupil immediately on receipt of such application.

(9) A pupil producing transfer certificate from class X of a recognised High School, may be admitted upto 15th July to class X of another recognised High School, subject to the following conditions. Cases of such admission must be reported to the Regional Officer concerned with a copy to the Secretary, Board, by 31st July.

(i) that there is no break of studies on the part of the intending pupil (i.e. continuous break for not more than 30 days within the relevant academic year):

(ii) that the subjects studies by the intending pupil in the previous school in class IX are taught in the school where admission is sought:

(iii) that the project and activities taken under Work Education and Physical Education respectively by the intending pupil in his/her previous school are in conformity with those in the school where admission is sought.

No admission to class X on the basis of transfer certificate shall be made beyond 15th of July.

Re-admission

(10)(i) If a pupil seeks re-admission to the same school which he/she had left

earlier may be disposed of by the head of the institution without reference to the Board condoning break of studies, if any, upto a maximum period of three years for sufficient reasons provided the age of the student so-readmitted does not/will not exceed 19 years while in class X.

(10)(ii) Students who have been sent up by the school for the Madhyamik Pariksha Secondary Examination) but have not been enrolled may similarly be readmitted by the head of the institution from which they were sent up with condonation of break of study, if necessary, provided the limit regarding age and break of study as stated above are not exceeded.

The Heads of all recognised secondary schools particularly those situated in the border areas are requested to note that only the ward(s) of an Indian national having permanent or temporary residence within the territorial jurisdiction of this Board are eligible for admission to secondary schools recognised by this Board. They are also requested to take effective measures and special care for prevention of fraudulent admission of students infiltrating to West Bengal from Bangladesh without valid documents, viz. Migration Certificate.

Sd/- Sudin Chattopadhyay, (Secretary)"

16. Similarly, another Circular was also issued on 6.6.2000 by the Board and there also the position was made clear that no first admission in the recognised secondary school will be allowed to any class higher than class X. The extract of the Circular reads as under:

West Bengal Board of Secondary Education 77/2, Park Street, Calcutta 700 016

Circular No. S/343 Date: 06.06.2000

From: Prof. Pradyot Kumar Halder,

Secretary, West Bengal Board of Secondary Education

To: The Heads of all recognised Secondary Schools

The following rules and procedure should be followed:

The academic session commence, from 1st May.

1) No first admission in a recognised secondary school be allowed to any class higher than class IX.

xxxxx"

17. These two Circulars make it very clear that the school had no business to admit the students to the higher class even by holding so-called admission test at their level. The action of the school was ex facie illegal and it cannot be countenanced. Therefore, the Board was well within their right not to register the students.

18. It is unfortunate that as the Board rejected the request of the school

authorities for registering the students for secondary examination the petitioners first obtained an order for provisional registration and with the passage of time when the examination came near the Court passed the order for permitting them to appear in the examination. Though when the matter came up before the Division Bench it was clearly mentioned in the order that in case the appeals failed, the students would not be entitled to any benefit flowing therefrom.

19. The Apex Court time and again has emphasised that in the matter of education the Court should not permit the admission of the students in the higher classes unless the law permits. In this connection reference may be made in the case of Council for Indian School Certificate Examination Vs. Isha Mittal and Another, and in the case of Mallikarjuna Mudhagal Nagappa and Others Vs. State of Karnataka and Others, .

20. The Division Bench of this Court in the Jalan''s case to which one of us was a party clearly mentioned that the Court should be very slow to interfere in the academic matters and rejected the plea of the LL.B students for appearing in the examination on account of not fulfilling the minimum attendance in the class.

21. In the present case we find that admittedly the action of the Board was justified in not registering the students for admission to the Secondary Examination being illegal in violation of the Circular issued by the Board from time to time. But unfortunately the interim order was passed by the learned single Bench and the students were registered and thereafter when the matter finally came up for disposal the learned single Bench by the plight of the students permitted them to appear in the examination as otherwise they will lose their precious one year. Therefore, the learned single Judge directed the Board to permit the students to appear in the examination. Against that order the present appeal was filed and the Division Bench passed qualified stay Order.

22. We make it no bones that the action of the Board was fully justified in not registering the students as this was against the Circular issued by them from time to time, but because of intervention of the Court Order they were registered. We hold that the action of the Board was fully justified in the facts and circumstances of the case.

23. However, again the human factor has come that the 102 students have already appeared in the examination and the result is yet to be announced and if on account of the fact that the appeal filed by the Board is allowed, then the result would be that the examination of these students will have to be cancelled. These young boys of 16/17 years" old for no fault of their will be unnecessarily punished for the fault of their parents and the school. Though the Apex Court in the case of Council for Indian School Certificate Examination v. Isha Mittal (supra) kept the career of these students in view and did not interfere with the order of the High Court. Similarly, having regard to the fact that the students have appeared and they are of very tender age and at this stage if their precious year is spoiled then it will have a very adverse effect on their career and keeping

in view the human consideration that the justice should be tampered with mercy, we direct that their result be declared but this will not be treated as precedent.

24. However, before parting with the case we make it very clear that the action of the appellant/Board was fully justified and the action of the schools was unjustified. The action of the schools should have to be condemned in no uncertain terms. The school should not have enrolled them in Xth class and forwarded their forms for registration for the Secondary Examination. We direct the appellant/Board to issue fresh Circular to all the schools that they will not permit the students to be enrolled in Xth class directly without passing IXth class in future and if any school does it they will do it at their own peril. It is also emphasised that if any school is found indulged in such activity in future then the school should be derecognised and the Government should be moved for stopping grant-in-aid. If stern actions are not taken then this kind of illegal practice will be encouraged by the schools for ulterior consideration.

We also direct the Director of School Examination, West Bengal to make an inquiry in the matter of admission given by the four schools to the said 102 students and to identify the person or persons responsible for illegal action and appropriate action be initiated against these schools and persons responsible for such illegal action.

All the appeal are accordingly disposed of with the above observations.

A.K. Mathur, C.J.

I agree.