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Civil Writ Jurisdiction Case No. 845 of 2001

In the matter of an application under Article 226 of the Constitution of India.

Kasidih High School ... Petitioner

VERSUS

The Chairman, C.B.S.E. & Ors ... Respondents

For the petitioner : M/s. Papan Sen
M.K. Ghosal

For the respondents : M/s. N.H. Banerjee, A.C.
M.K. Ghosh, Jharkhand

PRELIMINARY

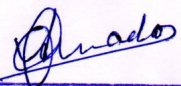
The Hon'ble Mr. Justice S.C. Mukhopadhyay.

ORDER

S.C. Mukhopadhyaya J. The writ petition has been preferred by Kasidih High School against the decision communicated vide letter dated 16.1.2001 by the Secretary, Central Board of Secondary Education (after standard X) (C.B.S.E. for short) whereby and whereunder it refused to allow the students of the petitioner-school to appear in forthcoming secondary examination. Further prayer was made to allow the students of the petitioner-school to provisionally sit for the secondary examination for the sessions 2000-2001 which was scheduled to start from first week of March 2001. The

2. The case was filed on 28.2.2001 and by interim order dated 2.3.2001, this Court allowed the petitioner to deposit requisite fees and forms of 163 students and directed the respondent-C.B.S.E., New Delhi to accept the fees and forms and to allow the students to appear in the examination as was scheduled to start from 7/8th March, 2001, subject to the decision of the case. However, it was ordered not to publish the result until further orders of the Court.

3. The brief fact of the case shows that the school known as Kasidih School and was established


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Sakchi, Jamshedpur


registered under
at Jamshedpur by Societies/Registration Act. The Tata Iron
& Steel Company Limited (TISCO) sponsored the school for
the purpose of providing opportunity to children of its
employees to run such school on 5^{1/2} acres of land with
buildings and all infrastructures facilities was granted
by TISCO by way of lease for a period of 20 years. The
school stated to have been running on such portion of
land measuring 5.50 acres over I.S. plot no. 2565 at Mouza
Sakchi, Jamshedpur. The school stated to have been
affiliated with Bihar School Examination Board but the
management of the school approached C.B.S.E. for its
affiliation in the year 1999. The C.B.S.E. by its letter
no. 10393 dated 22.11.1999 asked the principal of the
school to obtain no objection certificate from the state
Education Department, which is a pre-condition for
consideration of grant of affiliation by the C.B.S.E.
The school management in its turn approached the Director,
Secondary Education, Government of Bihar vide letter dated
28.8.1999 for grant of no objection certificate but matter
remained pending since long in spite of repeated request
and reminder given by the school.

It appears that on the direction of the Special
Secretary, Government of Bihar, the District Education
Officer, Jamshedpur held enquiry and submitted his
inspection report by letter dated 1.11.2000 but before
final decision could have taken for grant of N.O.C. in
pursuance of Bihar Re-organisation Act, 2000, such power
to grant N.O.C. vested with the newly created State of
Jharkhand.

As the matter remained pending in the forthcoming
secondary (standard X) examination/examination upto start
from March, 2001, the petitioner having no option, moved
this Court in C.W.J.C. no. 45/2001, which was disposed of
on 5.1.2001 with observation and direction to the



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Secretary, Department of Human Resources Development (Education), Government of Jharkhand to look into the matter and pass final order in one or other way within three weeks. However, no immediate decision was taken by the State of Jharkhand and in view of filing of contempt petition M.J.C. no.103/2001, a letter was issued on 12.2.2001 rejecting the prayer for grant of no objection certificate.

The M.J.C. no.103/2001 preferred by petitioner was disposed of by this Court on 6.2.2001 taking into consideration the rejection order dated 12.2.2001 wherein the Secretary, Human Resources Development Department, Ranchi informed that he has no objection if C.B.S.E. allowed the students of petitioner-school to appear in forthcoming March, 2001 examination. However, the C.B.S.E. by impugned letter dated 12.2.2001 refused to permit the students of petitioner-school to appear in March, 2001 Examination of Class-X as no student could have been allowed to appear without affiliation of the school being contrary to affiliation bye-laws. It was pointed out that by letter issued by the Board dated 20.11.1999, the school management was asked not to use the name of the Board in any manner or have any class in the school under B.B.S.E. pattern without permission failing which the Board will not be responsible for any consequences arising out of the same.

4. When the case was taken up for hearing at the stage of admission, the counsel for the petitioner merely attacked the refusal order issued by the State of Jharkhand for grant of N.O.C. The grounds for non-grant of N.O.C. as shown in the letter dated 12.2.2001 were attacked being incorrect. It was also submitted that the Court should take sympathetic attitude to student having allowed to appear in the examination, subject to the decision of the case, direction be given to establish the result.


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be affiliated by a school on pre-conditions.

Under Clause-18.9 of Chapter-III, no school can be started without written approval of the Board, nor can shall be responsible for any consequences in case class-VIII/IX/XI is started without written approval of the Board. It is only the students of the zilla affiliated school who were allowed to appear in Board's examination as stipulated under Clause-ii of Chapter-II of the By-laws.

Thus, it is evident that the C.B.S.E. could not have allowed the students to appear in the examination till it was affiliated, nor such affiliation could have been granted in absence of B.O.L.

7. Now, the question arises as to whether the students who have been allowed to appear in secondary (standard X) examination in March, 2001 in the light of interim order of the Court, in the facts and circumstances, their result should be declared or not.

In the case of C.B.S.E. & another v/s. P. Sanil Kumar & others, Civil Appeal No. 1362/98, similar question fell for consideration. In the said case, the Supreme Court by its judgment dated 12.5.1998 while allowed the appeal preferred by C.B.S.E., took into consideration the decision of the Supreme Court in C.B.S.E. v/s. Nikhil Julati & another, (1998) 3 S.C.C. 5, wherein the Supreme Court deprecated the practice followed by the High Court to issue direction to a law the students of an unaffiliated institution to appear in the examination. The Kerala High Court decision and direction given to publish the result of such students, who were allowed to appear in pursuance of Court's interim order, were set aside, the institution being not affiliated to the Board of Secondary Education.

8. In view of the decision of the Supreme Court in C.B.S.E. v/s. P. Sanil Kumar & others (supra), the institution of petitioner having not affiliated till date, the respondents cannot be directed to publish the result of


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students who appeared in pursuance of interim order of the Court. Such prayer for publication of result is rejected.

However, in the facts and circumstances, the State of Jharkhand having given its objection and such statement having made before this Court, the present order be taken into consideration. No objection certificate granted by the State of Jharkhand and the respondents are, accordingly, directed to consider the case of petitioner-school for its affiliation, in accordance with its bye-laws, taking into consideration the facts, if any, available.

In respect to affiliation of the petitioner-school, to be taken and communicated to the petitioner within one month and thereafter, if permissible, the respondents may allow the students to appear in the forthcoming examination.

The writ petition is hereby disposed of, with the aforesaid observations and directions.

JHARKHAND HIGH COURT
11th June, 2001
N.A.F.R./S.Ghat, Ranchi.

Handwritten notes:
d. 11.6.2001
CERTIFIED TO BE TRUE COPY
11/6/2001
Principal

Handwritten signature: Anand
**ADMINISTRATOR
JEM Foundation**

Handwritten signature: 11.6.5
**Principal
Kasidih High School
Sakchi, Jamshedpur**

JAMSHEDPUR COURT OF JUDICATURE, Ranchi

L.P.A. No. 407 of 2001

The State of Jharkhand Appellant

VS.

Kasidih High School and others Respondents

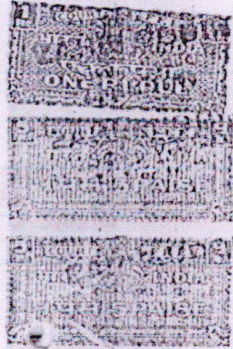
Coram Hon'ble the Chief Justice
Hon'ble Mr. Justice B.M. Prasad

For the Appellant: Petitioner: Mr. Arunda Sen
For the Respondent / Opp. Party: Mr. Tapen Sen

2. 17/7/2001

Mr. Tapen Sen, learned counsel appearing for the respondent - School states before us that the C.B.S.E. has since granted affiliation to the School for the period 2001-2002. He stated that the State Government has also been notified that if the C.B.S.E. decides to give affiliation to the School, the State will not object in the way of the C.B.S.E. in doing so.

Because of the aforesaid development, we find no merit in this appeal. It is accordingly dismissed.



V.V. Gupta
Mr. Prasad

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9/6/2001

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S. Madhupratap
14/7/2001
Notary
Authorized U/S 19 Act I of 1962

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