

# Minor Sunil Oraon Tr. Guardian & Ors vs C.B.S.E. & Ors on 13 November, 2006

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, Lokeshwar Singh Panta**

CASE NO.:

Appeal (civil) 4908 of 2006

PETITIONER:

Minor Sunil Oraon Tr. Guardian & Ors

RESPONDENT:

C.B.S.E. & Ors.

DATE OF JUDGMENT: 13/11/2006

BENCH:

ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:

J U D G M E N T (Arising out of SLP (C) No.11820 of 2006) ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Jharkhand High Court dismissing the Letters Patent Appeal which was filed by the Cambridge School Parents Association and another questioning legality of the judgment and order dated 15.6.2006 passed by a learned Single Judge in a Writ Petition. In the Writ Petition prayer was for a direction to the respondent-Central Board of Secondary Education (in short the 'CBSE') to allow the students to appear in the examination conducted by CBSE and to publish their results. The Writ Petition related to 159 students of Class X and 121 students of class XII of the Cambridge School, Tatisilwai, Ranchi for appearing in the examination which was scheduled to be held on 1st March, 2006. Though initially learned Single Judge had permitted candidates to appear pursuant to interim order dated 27.2.2006, subsequently the writ petition was dismissed on the ground that the school was not affiliated to the CBSE and, therefore, no direction sought for could be given. In the appeal filed under Clause 10 of Letters Patent, the view was endorsed.

In support of the appeal learned counsel for the appellants submitted that for no fault of theirs, the academic career of nearly 300 students is being jeopardized. Non- affiliation for some particular years has been highlighted by learned Single Judge and the Division Bench overlooking the facts that affiliation has been granted on 29.8.2006 for the academic session 2006-07 covering the period from 1.4.2006 to 31.3.2007.

In response, learned counsel appearing for CBSE and its functionaries submitted that the present appellants were proforma respondents before the High Court and the Cambridge School Parents Association purporting to be an unregistered Association of Parents of children studying in the said institution was the appellant. Further one of the proforma respondents was the appellant No. 2 before the High Court. It is pointed out that law is fairly well settled that students of non-affiliated schools cannot claim any relief on equitable ground. Any sympathy shown to the students of the unaffiliated and/or non-recognised institutions would be mis- placed sympathy.

Certain facts which are undisputed need to be noted:

The respondent No. 4 the Cambridge School had applied for grant of affiliation in September 1994 and was granted affiliation for a period of three years i.e. with effect from 1.4.1994 to 31.3.1997. The school applied for upgradation to plus 2 stage and the school was accorded upgradation up to plus 2 stage for a period of three years from 1.4.1996 to 31.3.1999. The affiliation of the school at Secondary/Sr. Secondary level was further extended for a period of three years from 1.4.1999 to 31.3.2002 and thereafter up to 31.3.2005 subject to fulfillment of Examination Bye Laws and the Affiliation Bye Laws of CBSE. As per the Affiliation Bye-

Laws of CBSE, the school applying for affiliation has to fulfill certain essential conditions. The relevant provisions relating to affiliation in the Bye Laws are as under:

(i) It is mandatory for a school affiliated to Board to follow the Examination Bye-

Laws of the Board in toto;

(ii) No affiliated school shall endeavor to present the candidates who are not on its roll nor shall it present the candidates of its unaffiliated Branch/School to any of the Board's Examination.

(iii) If the Board has reasons to believe that an affiliated school is not following the Sub-section 1 & 2 of this Section, the Board may resort to penalties as prescribed hereunder.

(iv) Every affiliated school shall present a list of number of students and their particulars in respect of Classes IX, X, XI & XII at the time of beginning of an academic session.

According to the respondent CBSE, the school in gross violation of Affiliation Bye-Laws was admitting large number of students in the secondary and senior secondary classes without providing support in terms of infrastructural facilities and also without adequate provision of qualified teachers. There were 30 sections in the school in classes IX to XII whereas there were only 40 sections from Nursery to Class VIII. It was also found that the school had admitted students from other unauthorized schools and sponsoring the students of unaffiliated school through this school. Inspection by the Inspection Committee constituted by CBSE was conducted and the Inspection Committee found that the school was not abiding by the Examination Bye Laws/Affiliation Bye Laws of the CBSE. It was further noticed that in clear violation of the norms, the Cambridge School,

Tatiswal, Ranchi which was the only school affiliated with the CBSE was running three schools which were not affiliated with the CBSE, they are as follows:

1. Kamla Nehru Vidya Mandir Tatisilwai, Ranchi,
2. Cambridge School, Kumartoli, Ranchi,
3. Cambridge School, Morhabodi, Ranchi.

The Inspection Committee found that the said school was not in a position to accommodate a large number of candidates as has been sponsored by it for taking All India Secondary School Examination and All India Senior School Certificate Examination to be held in the year 2002 and 2003. Other deficiencies were also noticed. One of the major infraction was that the school failed to produce the original school records, namely acquaintance roll of the teaching/non teaching staff working the school affiliated with the CBSE, fee collection register and the class wise attendance register. A large number of students had been sponsored for appearance, though the number of bonafide students was much less. Notice was sent to the school to show cause as to why necessary actions are not to be taken to withdraw provisional affiliation granted. Considering the replies to various communications by letter dated 27/28.2.2003 the school was informed as follows:

"However, taking into consideration the career of students and to safeguard the academic future of present students studying under the CBSE pattern and are in the Classes IX, X, XI & XII, the Competent Authority of the Board has agreed to permit all these students to appear at the All India Secondary and All India Sr. Secondary Certificate Examinations, scheduled to be held in March, 2003 and 2004. But the school will not run any class under CBSE pattern specifically classes IX, X, XI & XII w.e.f academic session 2003 and 2004 and in case of any violation in this regard the responsibility and consequences would rest upon the school authorities and the Board shall not be responsible."

CBSE was requested by the School to reconsider and review the decision regarding withdrawal of violation. In reply CBSE vide its letter dated 23.7.2003 advised the school not to run any Secondary/Senior Secondary classes under CBSE pattern.

A mercy appeal vide letter dated 19.1.2003 was submitted by the school and request was made to safeguard the educational interest of the students. The school instead of removing the deficiencies communicated to them by CBSE, requested for a sympathetic consideration by letter dated 16.3.2004. Joint Secretary (Affiliation), CBSE informed the school to submit the status report of removal of deficiencies as had been intimated to the school and it was, therefore, required to apply afresh for provisional affiliation as per the requirements of the Affiliation Bye Laws. The school applied for grant of fresh affiliation by application dated 31.5.2004. An Inspection Team was appointed for inspection of the school. As the essential conditions had not been fulfilled, the application was rejected by letter dated 7.10.2004. The school was informed about the glaring irregularities committed. The President of the school again requested CBSE to allow the students to

appear in Class X and XII Board Examinations which was scheduled to be held in March, 2005. School reiterated its request and by letter dated 19.11.2004 made a prayer for allowing students of Class X and XII to appear in 2005 Examination though their application for composite affiliation had been rejected. Certain undertakings were given in the said letter dated 19.11.2004 which, so far as relevant, are as follows:

"(a) We have not taken admission in Class IX and XI and will not admit without the permission of the Board.

(b) We have not admitted any additional student in class X and XII for 2005 Exam.

(c) I firmly promise not to approach the Board in future for examinations to be held after the students currently in Class X and XII are kindly allowed to take their examinations in 2005 on humanitarian grounds."

On the basis of the undertaking the Joint Secretary (Affiliation) CBSE by letter dated 9.12.2004 informed the school about the consideration of the request. It was noted that there were no students in classes IX and XI for the examinations to be held in 2006 and only students of class X and XII were allowed to appear at the All India Secondary and Senior Secondary Examination to be held in March, 2005 provided no candidate was directly admitted in class X and XII in the school.

The school again applied for affiliation on 22.3.2005 clearly indicating that there was no student in class IX and XI.

By letter dated 28.6.2005 CBSE informed the School that its request shall be considered up to Secondary level in the first instance. The school was clearly warned to stop functioning of its classes upto senior secondary level, without remaining the deficiencies pointed out on several earlier occasions. Vide letter dated 6.2.2006 the school requested CBSE to permit 159 students in class X and 121 students in class XII to appear examination which was to be held in March, 2006. The request was turned down.

It is essentially the stand of CBSE that the School is not an affiliated one to the CBSE and students whose schools are not affiliated with the Board cannot be allowed to sit in the Board's Examination as regular students. Though by interim order dated 27.2.2006 the learned Single Judge directed CBSE to allow the students of class X and XII of the school provisionally appear at the Examination, the same was subject to the decision of the case. Subsequently, the Writ Petition was dismissed and as noted above the Letters Patent Appeal was also dismissed. By filing Additional affidavit the petitioner has stated that some of the students who have taken the Examination pursuant to the interim order passed by the Board were in fact bona fide students. 32 students were studying from the lower schools and the 13 students were also studying from lower classes but had failed earlier appeared in class XII examination. Since these students are bona fide students even if it is held that affiliation has not been granted for certain period, that cannot be taken as a weapon to practically destroy the educational career of the students. The appellants have enclosed a list of 159 students of class X and 121 students of Class XII who were allowed to appear in the Secondary School and

Senior Secondary Examination, 2006 in terms of the interim order passed. CBSE in its affidavit had clarified that 728 students appeared in Class X Secondary School Examination which was held in 2006 from the school. Names of only 16 students appear in the list of Class XII examination held in 2006. The details in this regard are stated as follows:

"..further say that out of 728 students appeared in Class X examination (Secondary School Examination) held in March, 2004 from Cambridge School, Tatisilwai, Ranchi names of following 16 students only appear in the list of Class XII examination held in March, 2006 from this School:

Roll No.	Name
March/July, 2004	
1. 5140574	Kushal Chopra
2. 5140578	Manoj Kumar
3. 5140616	Renu KumariKarkusha
4. 5140621	Sweety Mahto
5. 5140624	Inu Pradhan
6. 5140658	Ashish Kumar Choudhary
7. 5140688	Manali
8. 5140733	Rohit Kumar
9. 5140803	SubhankarPrabhakar
10. 5140993	Shatabdi Gunjan
11. 5141007	Sanjay Kumar Srivastava
12. 5141051	Mohit Rajan
13. 5141065	Shailendra Chakram
14. 5141172	Ravi Kumar
15. 5141196	Deepika Rani
16. 5141281	Pancham kumar Basant Jonko

I am stating hereunder the status of 121 students mentioned in Annexure 1 annexed by the Petitioner with the Special Leave Petition:

SI. Nos. 6, 7, 14, 20 and 28, 36, 38, 44, 45,48, 49, 54, 56, 75, 78, 87, 104, 106, 117, 119 have not appeared in Class X Examination conducted by the Central Board of Secondary Education but have appeared from other Board.

The Roll Nos. of Candidates at SI. No. 34, 79, 121 as stated in Annexure I are wrong, hence, their status has not been given.

SI. Nos. 1, 2, 3, 4, 5, 9, 10, 12, 13, 16,17,18,19, 21, 24, 25, 26, 29, 30, 31, 32, 35, 39, 40,41, 42, 47, 50, 51, 52, 53, 55, 57, 58, 59, 61, 62, 65,69, 70, 74, 80, 82, 83, 84, 85, 86, 89, 90, 91, 92, 93,94, 95, 96, 97, 102, 103, 105, 109, 110, 111, 112,113, 114, 115, 116, 118, 120 have not appeared in Class X Examination of CBSE from Cambridge School, Tetisilwai, Ranch.

I am enclosing herewith Annexure R-13 showing the details of the students and schools from where they have passed Class X examination."

Now, we would refer to the law settled by this Court in various Judgments to the effect that interim orders of the nature passed in the present case are detrimental to education and its efficient management. As a matter of course, such interim orders should not be passed, as they are aberrations and it is subversive of academic discipline.

In *Regional Officer, CBSE v. Sheena Pethambaran*, [(2003) 7 SCC 719], at page this Court has observed:

"6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions "

In the case of *C.B.S.E. & Anr. v. P. Sunil Kumar & Ors.* [(1998) 5 SCC 377], the institutions whose students were permitted to undertake the examination of the Central Board of Secondary Education were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim orders granted by the High Court. In that context the Supreme Court observed:

"4 "But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students."

In the case of *Guru Nanak Dev University v. Parminder Kr. Bansal* [(1993) 4 SCC, 401] the Supreme Court observed that such interim order is subversive of academic discipline. The relevant observations are as under:

"We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates ... The courts should not embarrass academic authorities by themselves taking over their functions."

Yet in another case i.e. in the case of A.R Christians Medical Educational Society vs. Govt. of A.P. [(1986) 2 SCC 667] this Court held that:

"We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

In the case of State of Tamil Nadu v. St. Joseph Teacher's Training Institute [(1991) 3 SCC 87] this Court observed that the direction of admitting the students of unauthorized educational institutions and permitting them to appear at the examination has been looked on with disfavour and the students of unrecognised institutions who are not legally entitled to appear at the examination conducted by the Educational Department of the Government cannot be allowed to sit at the examination and the High Court committed an error in granting permission to such students to appear at the public examination.

In the case of Central Board of Secondary Education v. Nikhil Gulati [(1998) 3 SCC 5], this Court deprecated the practice followed by the High Court to issue direction and also observed that such aberrations should not be treated as a precedent in future.

In Krishna Priya Ganguly v. University of Lucknow [(1984)1 SCC 307], the Supreme Court observed:

"3 Whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted unless the court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible."

In State of Maharashtra v. Vikas Sahebrao Roundale (1992) 4 SCC 435], it was held that the students of unrecognized and unauthorized educational institutions could not have been permitted by the High Court on a writ Petition being filed to appear in the examination and to be accommodated in recognized institutions. This Court observed:

"12. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education."

Time and again, therefore, this Court had deprecated the practice of educational institution admitting the students without requisite recognition or affiliation. In all such cases the usual plea is the career of innocent children who have fallen in the hands of the mischievous designated school authorities. As the factual scenario delineated against goes to show the school has shown scant regards to the requirements for affiliation and as rightly highlighted by learned counsel for the CBSE, the infraction was of very serious nature. Though the ultimate victims are innocent students that cannot be a ground for granting relief to the appellant. Even after filing the undertakings the School non-challantly continued the violations.

Students have suffered because of the objectionable conduct of the school. It shall be open to them to seek such remedy against School as is available in law, about which aspect we express no opinion.

The appeal is dismissed but without any order as to costs.