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**2020**

**W.P. 846 (W) of 2020**  
**Kartick Rajbangshi**  
**-Versus-**  
**The State of West Bengal & Ors.**

**Mr. Gourav Das**  
**Mr. Hemanta Kumar Das**  
**Mr. Nepesh Majhi**  
**Mr. Nilay Baran Mondal      ...For the Petitioner**

**Mr. Arindam Chattopadhyay**  
**...For the State**

**Mr. Ekramul Bari**  
**Ms. Tanuja Basak                      ...For the School Authorities**

1.            The primary controversy in the present writ petition is with regard to the action of the school authorities in not allowing a student of the Bolpur High School (H.S.) (hereinafter referred to as “the School”) from participating in the Higher Secondary Examination (Class-XII) on the allegation of the student having cheated in one of the test examinations (pre-board examination) in the subject “computer application”.

2.            The facts of the present case are as follows :-

a)            The student took all the examinations in the test examination, that is, the examination to be given at the end of the academic session of Class-XII which the student is required to pass and qualify, and thereafter sit for the higher secondary examination. The last paper was the

Computer Application paper.

- a) The allegation against the student is that a particular invigilator found the student rising from his seat and walking some distance to another student and copying certain answers from the other student.
- a) According to the School Authorities, the invigilator, upon noticing the same, took the answer paper from both the students and the students gave self-declarations of having cheated in front of some of the non-teaching and teaching staff.
- a) The above case of alleged cheating was thereafter reported to the Academic Council of the School, who decided not to allow both the students from appearing in the Higher Secondary Examination. Subsequently, the Managing Committee of the School also passed a similar resolution.
- a) The student's father thereafter wrote to the School Authorities on several occasions seeking leniency for his son but the letters dated December 7, 2019 and December 18, 2019 were

not answered by the School Authorities. According to the School Authorities, the student was verbally informed that the prayers in the letters had not been accepted by the School Authorities.

3. Mr. Gourav Das, counsel appearing on behalf of the petitioner, submitted that the declaration given by the student is of no consequence as the same was written by the student under duress. He further submitted that the declaration itself indicates that the statement written by the student was struck out and another statement was put in its place. He further submitted, assuming but not admitting, that even if the student had made the said declaration, the same was under duress and could not be relied upon by the School Authorities for imposing a strict penalty wherein the student is not being allowed to take part in the Higher Secondary Examination. He further submitted that the principles of natural justice have been given a total go-bye and in absence of any norms and regulations of the school, the one sided arbitrary action by the School Authorities is illegal, arbitrary and against the principles established in law. He relied on the decisions of the Supreme Court in the cases of *Board of High School & Intermediate Education, U.P. & others vs. Kumari Chittra Srivastava & others* reported in AIR 1970 SC 1039, *Khem Chand vs. The Union of India and Others* reported in AIR 1958 SC 300 and a decision of the Calcutta High Court in the case of *W.B.*

*Council of Higher Secondary Education vs. Roushanara Momtaz* reported in 1991 Supreme (Cal) 89 to buttress his argument that the School Authorities are required to follow the basic principles of natural justice and a blanket refusal not to allow the student to sit in the Higher Secondary examination without a fair hearing is a harsh penalty that cannot be levied on the student.

4. Mr. Ekramul Bari, learned Counsel appearing on behalf of the School Authorities submits firstly that the writ petition is delayed as the knowledge of the petitioner with regard to his son not being able to take the examination was known to the petitioner as early in November 2019. Having sat tight over the matter, the petitioner chose to file this writ petition only on January 14, 2020 way after the time schedule required for the School Authorities to send the names to the West Bengal Council of Higher Secondary Education (WBSE).

5. Mr. Bari's second limb of argument revolved around the legal position that in matters relating to decisions of School Authorities in educational matters, the Court should be slow in disturbing and/or interfering with the same. He further submitted that it is the responsibility of the School Authorities to maintain discipline and to stop malpractice in examinations, and any interference by the Court would be counter productive to the same.

6. Mr. Bari referred to a decision of the coordinate Bench of the Calcutta High Court in the case of *Miss Debopriya Ganguly vs. State of West Bengal & Ors*, reported in (2004) 3 CAL LT 159 (HC) and placed paragraphs 11,16,18, 34 & 37 to emphasise on the principle that educational institutions have a right to maintain their standards of discipline and such rules and regulations should not be interfered with by the Courts unless there is palpable arbitrariness.

7. On a conspectus of the decisions cited before me, it is clear that the Courts are slow in disturbing and/or interfering in decisions taken by the School Authorities, especially in matters relating to allowing students to appear in the Higher Secondary Examinations. This is because of the reason that the results in the Higher Secondary Examinations are open to the public and the results of the students reflect the academic performance of the school as well. The Courts have also categorically held that the rules and regulations of the Councils and Boards should not be interfered with unless there is a manifest illegality in the same.

8. The undisputed facts in the present case are firstly that there is allegation of cheating on the student in an optional paper, that is, Computer Application, in the test examination held internally by the School Authorities.

Secondly, the School Authorities do not have any norms or rules with regard to the procedure to be followed in the event a student is caught cheating in an examination. Thirdly, students in the present academic year of the School who have failed in up to five subjects have been allowed to sit in the Higher Secondary Examination with an undertaking from the parents of such students. Lastly, no opportunity was given to the student and no mechanism was in place for confirming the said allegation of cheating by the student. It may be noted that in the case of *Miss Debopriya Ganguly (supra)* at paragraph 35, the coordinate Bench had held that each and every institution affiliated to the Council shall expressly prescribe their own norms and terms and conditions for holding examination and declaring the 'qualified students' who are allowed to thereafter appear in the Board examination. The Court had further directed that such norms and policy of each and every institution shall also be communicated to the Council. In the present case, no such norms and regulations are present and, therefore, none have been communicated to the Council.

9. Reliance may be placed on *Board of High School & Intermediate Education, U.P. & others (supra)* wherein the Supreme Court held as follows:-

*“We agree with the High Court that the impugned order imposed a penalty. The petitioner has appeared in the examination and answered all the question papers. According to her she had*

*passed. To deny her the fruits of her labour cannot but to be called a penalty. We are unable to appreciate the contention that the Board, in “cancelling her examination” was not exercising quasijudicial functions. The learned counsel urges that this would be, casting a heavy burden on the Board. Principles of natural justice are to some minds burdensome but this price-a small price indeed-has to be paid if we desire a society governed by the rule of law. We should not be taken to have decided that this rule will also apply when a candidate is refused admission to an examination. We are not concerned with this question and say nothing about it.”*

10. In light of the above decisions, I am of the view that the student has a right to be given a fair hearing and specific norms and regulations should be in existence. In absence of any such norms and regulations, the actions of the School Authorities may at times fall in the arena of whimsical and capricious decisions resulting in victimization of certain students. Suffice it to say, lack of a fair hearing before imposing a harsh punishment amounts to violation of principles of natural justice, and therefore, is arbitrary and anathema to Article 14 of the Constitution of India. In the present case, in absence of any rules and regulations, the benefit of doubt is required to be given to the student. The punishment imposed on the student wherein he is not allowed to take part in the Higher Secondary examination would not only harm his career in terms of the student losing a year but shall leave a permanent scar and stigma on his personality for the rest of his life. Such a harsh decision cannot be taken without a fair hearing.

11. In light of the same, the decision taken by the School Authorities in not allowing the student from taking part in the Higher Secondary examination is hereby quashed and set aside.

12. The School Authorities being the respondent nos. 5 and 6 are directed to send the name of the student to the WBSE being the respondent Nos. 2 and 3 within a period of 10 days from date. The petitioner along with his son are directed to approach the School Authorities on Monday, February 10, 2020 for signing all requisite forms and completing all formalities. The respondent nos. 2 and 3 are also directed to act in accordance with law and ensure that the admit card for the Higher Secondary Examination is provided to the student before commencement of the Higher Secondary Examination, 2020.

13. With the aforesaid directions, the writ petition is disposed of.

14. There will be no order as to costs.

15. Photostat plain copy of this order duly counter-signed by the Assistant Registrar (Court) be made available to the learned Advocates appearing for the parties on usual undertaking.



**( *Shekhar B. Saraf, J.* )**