

S.Sripathi. Vs.The Director of Matriculation Schools, and ors.

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Court : Chennai

Decided On : Jul-13-2012

Judge : K.Chandru, J.

Acts : Constitution Of India - Articles 226, 30(1)

Appeal No. : W.P.No.16474 of 2012

Appellant : S.Sripathi.

Respondent : The Director of Matriculation Schools, and ors.

Advocate for Def. : Mr.P.Sanjay Gandhi; Mr.S.Silambannan, Advs.

Advocate for Pet/Ap. : Mr.K.Thilageswaran, Adv.

Judgement :

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to direct the respondents to provide admission for the petitioner S.Sripathi in IX Standard-1st group in the third respondent school within the time frame fixed by the court.

K.CHANDRU, J.

ORDER

1. The petitioner, who is a minor represented by his father, a resident of Idayarpalayam, Coimbatore, has filed the present writ petition seeking for a direction to provide admission to him in the 11th standard - First group in the third respondent school within a time frame as may be fixed by the court.

2. When the matter came up on 28.06.2012, this court directed the learned Additional Government Pleader (Education) Mr. Sanjay Gandhi to take notice for respondents 1 and 2. In respect of third respondent private school, a private notice was directed to be served. Accordingly, private notice was served. On notice the third respondent has filed a detailed counter affidavit dated 1.7.2012.

3. The case of the petitioner was that he has been studying in the third respondent school which is an unaided minority school for the last 12 years from LKG to 10 standard. He wrote public examinations in SSLC and had secured 91% of marks. He is a regular student in the third respondent school. He sought admission in the 11th standard First group. But, however, to the shock of the petitioner without any valid reason, the third respondent school denied admission. When he enquired, he and his father were told that since his father is actively participating in the Parents Teacher association of the school, i.e., Lisieux Parents and Students Welfare Association, his son could not be given admission. The denial of admission was unjust and illegal. He also belonged to Backward Class community. The denial of admission is hit by Articles 14 and 21A of the Constitution. Section 13 of the Right of Children for Free and Compulsory Education Act, 2009 (for short RCE Act), no school can subject to any child or parent for any screening procedure for admission. The decision of the respondent school was also violative of the judgment of the Supreme Court in Cambridge School Vs. Payal Gupta reported in (1995) 5 SCC 512. Reference was also made to a judgment of this court in Prof. Dr. S. Anandalakshmy's case reported in 2007 (4) MLJ 689, wherein it was held that all students of class 10 are entitled to continue 11th standard in the same school without any fresh selection process. Hence they cannot find fault with the role of his father who is connected with the registered parents and students welfare association.

4.The third respondent in his counter affidavit stated that the school is already having Parents Teacher Association which has five office bearers and six committee members. But, however one parent by name Syed Jalal, of a student studying in the lower class started giving pressure to the management. He formed a parallel association called Lisieux Parent and Student Welfare Association claiming himself to be the President. The said Association has nothing to do with the management. But however the said association on 18.01.2012 sent a letter to the management asking them to communicate all issues and subjects pertaining to the welfare of students and parents. A meeting was convened before the Collector and proceedings was issued on 14.3.2012 stating that the disputes relating to school management and parents should be resolved by legal means and no one should protest inside the school or in front of the school. But the pressure exerted by the association led by Syed Jalal increased day by day. When he started forcing himself into the office of the Principal along with the association office bearers, the management was forced to give a complaint. The petitioner's application came up before the academic council. The academic council had decided not to give admission in view of his conduct where he had greatly misbehaved which resulted in one of the teacher resigned from the school. Hence admission was denied to him.

5.It was further stated that thereafter the petitioner's father made a representation to the third respondent and also gave a letter to the Chief Educational Officer. The parallel association also sent a letter to the Director of Matriculation Schools asking him to direct the school to admit the student. The student's father was a member of the association was of no consequences. However, after joining hands with Syed Jalal, the petitioner's father also started interference with the school management. The Inspector of Matriculation Schools acting upon the pressure had directed the management to consider giving admission to the student. Finally, the school academic council in its meeting held on 19.06.2012 agreed to accept the recommendation of the Inspector of Matriculation Schools and decided to give admission to the petitioner with a condition that he will concentrate only on studies and should give due respect to staff and school management and that his father should give an assurance that he will not interfere with the management of the school. This fact was also informed to the Inspector of Matriculation Schools. But,

however the said Syed Jalal who has greater influence with the police and media gathered before the school with about 100 parents, many of them are not connected with the school along with another group called Democratic Youth Federation and started disrupting ingress and egress of teachers and students and shouted slogans against the management. The local police also supported the said Syed Jalal. But, however every day, it became the ordeal for the school. Therefore, the academic council once again met and taking into account the over all circumstances, had decided that admission should not be given to the petitioner's son as it will be detrimental to the interest of other students and management. Their school is an unaided minority school and it cannot be compelled by threat to admit any students. The teachers of the school en masse gave individual written complaints to the management not to admit the student considering his behaviour as well as his father. They had stated that it will jeopardize the interest of the school. No writ petition will lie against the management. There is no arbitrariness or illegality and violation of Article 21A of the Constitution. The school enjoys right under Article 30(1) of the Constitution and that the interest of the school is the paramount consideration of the school. Neither the student nor his father chose to accept the opportunity given to provide admission to the student.

6. Heard the argument of Mr.K.Thilageswaran, the learned counsel for the petitioner and Mr.P.Sanjay Gandhi, learned Additional Government Pleader (Education) for respondents 1 and 2 and Mr.S.Silambannan, learned Senior Counsel appearing for the third respondent.

7. The contention raised based upon the provisions of the Right of Children for Free and Compulsory Education Act, 2009 is misconceived for two reasons. First of all, the Act only talks about admission of students to Classes 1 to 8. It does not deal with the admission to 11th standard as in the present case. Secondly, the Supreme Court vide judgment in Society for Un-aided Private Schools of Rajasthan Vs. Union of India and another reported in 2012 (4) Scale 272 has held that provisions of the Act will not apply to unaided minority schools. Since the petitioner placed reliance upon a judgment of Payal Gupta's case, it must be noted that in that case the procedure for forbidding students from being admitted to 11th

standard as the student failed to get the cut-off marks for admission was held to be bad.

8.The Supreme Court in Principal, Kendriya Vidyalaya and others Vs. Saurabh Chaudhary and others reported in (2009) 1 SCC 794, had upheld the order passed by this court in Prof.Dr.S.Anandalakshmy's case and also held in paragraphs 18 to 20 as follows :

"18.One can have no objection to a school laying down cut-off marks for selection of suitable stream/course for a student giving due regard to his/her aptitude as reflected from the Class X marks where there are more than one stream. But it would be quite unreasonable and unjust to throw out a student from the school because he failed to get the cut-off marks in the Class X examination. After all the school must share at least some responsibility for the poor performance of its student and should help him in trying to do better in the next higher class. The school may of course give him the stream/course that may appear to be most suitable for him on the basis of the prescribed cut-off marks.

19.In the present case, it would have been perfectly open to the appellants to offer admission to the boy Saurabh Chaudhary in Class XI in streams/courses other than science stream with Mathematics on the basis of the prescribed cut-off levels of marks, had such courses been available in Central School No.2, AFS, Tambram. But this school has only Science stream with Mathematics for Classes XI and XII. The decision in Payal forbids the school from turning down a student because he/she failed to get the cut off level of marks for admission to class XI. As a result of this fortuitous circumstance the boy must get admission in class XI in Central School No.2, AFS, Tambram in Science stream with Mathematics.

20.In light of the discussions made above, we come to the conclusion that the case in hand is fully covered by the earlier decision of the Court in Payal. The decisions of the three High Courts relied upon by Mr. Patwalia in so far as they go contrary to the decision in Payal do not lay down the correct law. The decision of the Madras High Court coming under appeal takes the correct view of the matter and warrants no interference by this Court."

9.The case on hand did not arose out of any policy of the management in denying admission to a student, but on the other hand it related to one individual, i.e., the petitioner and the reasons were established before this court. The learned Senior counsel also produced number of complaints written by teachers. This court had an occasion to peruse the same. In one case, one female teacher had written about the misbehaviour of the student with teachers while he was studying in 10th standard. All teachers in the school have unanimously requested the management not to admit the petitioner's son as it may violate the discipline of the school. Therefore, the judgments in Payal Gupta case as well as Saurabh Chaudhary case will not have direct application to the present case. It has always been held that minority run educational institutions have right to admit students on their own and any regulations curtailing the same will be unconstitutional as was held in a recent judgment of the Supreme Court in Society for Un-aided Private Schools of Rajasthan Vs. Union of India and another reported in 2012 (4) Scale 272.

10.In the present case, because of the conduct of the said student and his father and also ruckus made in front of the school creating law and order problem, the school though was initially inclined to admit the petitioner, had gone back with their stand after the decision taken in the academic council of the school. Hence the relief sought for by the petitioner cannot be granted. Accordingly, the writ petition will stand dismissed. No costs.

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