

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C) No. 438 of 2022

1. Tripura Board of Secondary Education, represented by its Secretary Pandit Nehru Complex, Gurkhabasti, P.O. Kunjaban, Agartala, Pin-799006, West Tripura.

-----Petitioner(s)

-V-E-R-S-U-S-

1. Shri Anowar Hossen, resident of ward No.1, P.O. Kama Nagar, R.D. Block, Boxanagar, Gaon Panchayat, Anandanagar, District: Sepahijala Tripura.
2. Grameen Mukta Vidhyalayi Shiksha Sansthan, represented by its Secretary, 1/11955, Ground Floor, Muskan Building, Keshav Chowk, Panchsheel Garden, Naveen Shahdara, Delhi, Pin-110032.
3. Council of Boards of School Education in India, represented by its General Secretary, 6H BigJo's Tower, A-8 Netaji Subhash Place, Ring Road, Delhi-110034.
4. Union of India, represented by the Secretary to the Ministry of Human Resource Development Department of School Education and Literacy, Shastri Bhawan, New Delhi.

[***As per Hon'ble Court's order dated 18.07.2022 passed in I.A. No.01 of 2022 National Commission for Minorities has been incorporated as respondent No.5.]

5. National Commission for Minorities, Government of India, represented by its Chairman 3rd Floor, Block-3, CGO Complex, New Delhi-11003.

-----Respondent(s)

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Petitioner(s)	:	Mr. D. Bhattacharjee, G.A. Mr. Soumyadeep Saha, Advocate.
For Respondent(s)	:	Mr. B. Majumder, Deputy SGI. Mr. Somik Deb, Sr. Advocate. Mr. B. Majumder, CGC. Mr. K. Debnath, Advocate.
Date of hearing	:	20.04.2023
Date of delivery of judgment and order	:	27.04.2023
Whether fit for reporting	:	YES

JUDGMENT & ORDER

Heard D. Bhattacharjee, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the petitioner. Also heard Mr. Somik Deb, learned senior counsel assisted by Mr. K. Debnath, learned counsel as well as Mr. B. Majumder, learned Deputy SGI and Mr. B. Majumder, learned CGC, appearing for the respondents.

[2] This present writ petition has been filed under Article-226 of the Constitution of India for setting aside the findings recorded on 20.12.2021 by the National Commission for Minorities by its communication dated 04.01.2021.

[3] The brief facts of the present petition is that the petitioner TBSE is a government of Tripura recognized school education board which is responsible for the promotion and development of secondary education in the State. The respondent No.2 by an application dated 05.08.2017 sought admission of students passed from there institutes to be admitted under the school affiliated recognized by the petitioner in Class-XI. The petitioner by a letter dated 29.08.2017 intimated the respondent No.2 that the students who passed the secondary education conducted by the respondent No.2 are eligible for admission into Class-XI in any school affiliated to petitioner subject to pass the subjects as per NCERT syllabus and the same has been again communicated by a letter dated 30.08.2017.

[4] The petitioner by a memorandum dated 30.06.2018 withdrawn the aforesaid permission so communicated on 30.08.2017 and the said memorandum has been duly notified in the local daily newspaper. This has been further intimated that unrecognized member of respondent No.3 may not be accepted by the Educational Institutions for further studies. The respondent No.2 by a letter dated 20.06.2018 informed the respondent No.1 that the association of respondent No.1 so affiliated by the respondent No.2 automatically cancelled with immediate effect.

Thereafter, the respondent No.1 made complaint to National Commission for Minorities who after final hearing recorded its findings on 04.01.2022 and recommended to take examination process within 30 days and certificates be issued to the students.

[5] Hence, the present writ petition has been filed before this Court by the petitioner for redress.

[6] Mr. Bhattacharjee, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the petitioner has submitted that the petitioner by a letter dated 29.08.2017 intimated the respondent No.2 that the students who passed the secondary education conducted by the respondent No.2 are eligible for admission into Class-XI in any school affiliated to petitioner subject to pass the subjects as per NCERT syllabus. The same has been again communicated by a letter dated 30.08.2017. The petitioner vide memorandum dated 30.06.2018 withdrawn the aforesaid permission so communicated on 30.08.2017. The said memorandum has been duly notified in the local daily newspaper. It is highlighted that the permission accorded by the petitioner in favour of the respondent No.2 confined to the students of Tripura jurisdiction.

[7] He has further contended that the petitioner made a communication dated 28.10.2018 to the respondent No.4 regarding the status of respondent No.2. In reply to that, the respondent No.4 informed that the respondent No.2 is neither approved nor recognized by them. The respondent No.3 by a communication dated 13.12.2018 informed that the Boards or institutions set up by an Act of Parliament or State Legislative of by an Executive order of the Central/State Government grants membership. The membership of respondent No.2 is no longer available with the office of respondent No.3.

[8] Vide letter dated 09.01.2017, the respondent No.4 informed that having membership of respondent No.3 no Boards/Council/Educational Institution become an authority for conduct of public examination and award certificate. This has been further intimated that unrecognized member of respondent No.3 may not be accepted by the Educational Institutions for further studies.

[9] The respondent No.2 by a letter dated 20.06.2018 informed respondent No.1 that the association of respondent No.1 so affiliated by the respondent No.2 automatically cancelled with immediate effect. The National Commission for Minorities issued one notice on 23.08.2021 on the complaint of respondent No.1 to the petitioner. The National Commission for Minorities has no jurisdiction to take cognizance on a complaint regarding permission to admit students in Class-XI to the schools affiliated by the petitioner accepting the eligibility of pass certificate in Secondary Examination from the respondent No.2.

[10] The permission confined to the students irrespective of any classification like minority or majority or any religious complaint in spite of the fact that the respondent No.2 is no longer a recognized body either by the Central Act or by the State Act, and therefore, the association of respondent No.1 is also claimed to be an illegal status. No student has come forward to make complaint to the commission or to the petitioner or even the affiliated schools of the petitioner. On bare perusal of the record it would show that the permission has been accorded on 30.08.2017 and withdrawn on 30.06.2018 i.e. by 10 months no Board or a recognized institution can hold examination of Secondary Education.

[11] On further scrutiny of the representation dated 05.08.2017 it would show that the respondent No.2 stated that their institution has been fulfilled the criteria of respondent No.4 and they are recognized by SCERT and Himachal Pradesh Board of School Education. But, such status is no

longer in existence as would be evident from letters dated 22.10.2018 and letter dated 13.12.2018. Upon final hearing on 20.12.2021 the Commission recorded its findings which has been communicated by a letter dated 04.01.2022. The Commission recommended to take examination process within 30 days and certificates be issued to the students.

[12] It has further been submitted that if a body recognized by the law or affiliated have no legal basis to carry out the process of admission, examination and issuing pass certificate, the acts of such body is violation of the norms of the petitioner Board. The beneficiary of that body/institution is supposed to be legally barred to claim any relief. The petitioner has no knowledge about the admission of students by the respondent No.1 herein in the mean time for Class-X & XII together.

[13] The petitioner issued recognition to number of schools in remote part of the State for free education of the children particularly under Right to Education Act, 2006. The government of India Schemes namely, Sarva Shiksha/Samagra Shiksha is simultaneously running throughout the State to educate children. The present complaint is monitored by the petitioner by passing/ignoring legal and constitutional obligations therefore; the present complaint is required to be dismissed.

[14] Though objection of jurisdiction of the Minorities Commission, New Delhi was raised on behalf of the petitioner herein, but such was rejected in light of Section-9 of the National Commission for Minorities Act, 1992 though requisite norms of the petitioner were not followed by the respondent No.1. Taking cue from the note of the Minorities Commission, New Delhi in its 4th page last paragraph wherein it may be seen that though the fact that there were violation of norms by the respondent No.2 herein, but failed to appreciate that the letter of petitioner dated 29.08.2017 was much earlier than the occurrence of violation, which came within its knowledge.

[15] Mr. Bhattacharjee, learned G.A. has further averred that the Minorities Commission, New Delhi failed to appreciate the fact of respondent No.2 had also cancelled its affiliation for the respondent No.1 on 20.06.2018 and also failed to appreciate the fact that the petitioner Board on 30.06.2018 informed the respondent No.2 about the cancellation of their affiliation based on a news article published on behalf of GMVSS relating to guaranteed pass out of examination.

[16] The Minorities Commission, New Delhi has also failed to appreciate the fact that the petitioner by the communication dated 29.08.2017 gave the permission to the students to get admission in Class-XI in the schools affiliated to TBSE who passed Secondary Examination under GMVSS, respondent No.2. After getting eligibility from the petitioner, students take admission in the schools affiliated by TBSE and after successful completion of the course; one may appear at Class –XII exam conducted by TBSE. The conducting exam of Class-X by GMVSS is not the matter of TBSE. But, in the communication dated 29.08.2017, it was not mentioned about any kind of permission for conducting Class-XI exam by GMVSS. Eligibility was given only for taking admission in Class-XI in the school under TBSE.

[17] The Minorities Commission, New Delhi failed to appreciate the fact that MHRD vide letter dated 22.10.2018 informed the petitioner Board that there is no such affiliated body (Respondent No.2 herein) recognized by their department and as such institutions are contrary to the constitutional provisions. It has also been failed to appreciate that on 13.12.2018 Council of Boards of School Education (COBSE) informed that the respondent No.2 (GMVSS). Further, MHRD vide letter dated 09.01.2017 informed the institute of Secondary Distance Education that certificate issued by the unrecognized member/Boards/COBSE may not be acceptable by the educational institutions for further studies.

[18] The balance of convenience and inconvenience lies strongly in favour of the petitioner. If a stay order on the order after the hearing note of the Hon'ble Minorities Commission, New Delhi dated 20.12.2021 is not passed in favour of the petitioner, the petitioner will be highly prejudiced and there would be serious complication. Ex-facie the respondents are not eligible for affiliation from the petitioner Board pursuant to their conduct which is evident on records.

[19] In view of above discussion, it reveals that the respondent was informed that students who pass the secondary examination conducted by GMVSS are eligible for admission in Class-XI in any school affiliated to Tripura Board of Secondary Education provided they had passed in the subjects as per NCERT Syllabus [Annexure-2 to the writ petition]. TBSE vide letter dated 30th June, 2018 communicated to the respondent that some complications have arisen another organization has arrived in the scene with same name. In addition, advertisements have been published in local newspapers inviting applications for on demand Madhyamik Examination of GMVSS by 17th June, 2018 with the assurance that on passing this Madhyamik Examination of GMVSS the students would get the scope of getting admitted in Class-XI in any school affiliated to TBSE this year itself. In view of above, TBSE hereby withdraws the clearance it had given earlier vide its letter dated 30th August 2017. A fresh view will be taken on the issue after obtaining the opinion of MHRD, Govt. of India and Education Departments of NCT, New Delhi, Himachal Pradesh and Uttarakhand, which is not being challenged by the respondent herein.

[20] Government of India, Ministry of Human Resource Development Department of School Education and Literacy (School-3) vide its letter dated 9th January, 2017 has informed regarding membership of COBSE. For the purpose of reference, it may be quoted as under:

“F.No.14-2/2017(Sch.3)
Government of India,
Ministry of Human Resource Development

**Department of School Education and Literacy
(School-3)**

New Delhi dated 9th January, 2017

To,
The President,
Institute of Secondary Distance Education (ISDC)
2, Street New Market, Timarni,
Madhya Pradesh,
PIN-461228

Subject: Regarding membership of COBSE.

Sir,

I am directed to refer to your letter No. Ref. No.10100/16 dated 26.12.2016 on the subject cited above and to inform that Council of Boards of School Education in India (COBSE) is a non-governmental organization (NGO). Ministry of Human Resource Development has not authorized COBSE to grant membership to the Boards/Councils/Educational Institutions. It is also informed that by obtaining membership of COBSE, no Boards/Council/Educational Institution become an authority for conduct of public examination and award certificates. The certificates issued by the unrecognized Member Boards/Council/Educational Institutions of COBSE may not be acceptable by the Educational Institutions for further studies. Therefore, you are advised to seek recognition from appropriate Government for conduct of public examination and award of certificates.

This is also brought to the notice of the following organizations:-

1. Chairman CBSE, Delhi.
2. Chairman, NIOS, Delhi.
3. Chairman, UGC, Delhi.
4. Vice Chancellor, Delhi University, Delhi.
5. President, A.I.U. Delhi.

**Yours Faithfully
Sd.**

(M.P.Singh)

Under Secretary to the Govt. of India.”

[21] Regarding cancellation of affiliation with Grameen Mukta Vidhyalayi Shiksha Sansthan (GMVSS), in accordance with the letter dated 21.03.2018 issued the provisional affiliation for Tripura State. It has been observed that since this association with Grameen Mukta Vidhyalayi Shiksha Sansthan (GMVSS), violating the rules and regulations as described and is defacing the image of Grameen Mukta Vidhyalayi Shiksha Sansthan (GMVSS) due to this; it was informed that the affiliation term is automatically cancelled from immediate effect.

[22] Needless to mention here that the respondent No.1 informed Mr. Anwar Hussain that he is violating the rules and regulations of the board and hence association/affiliation is automatically cancelled with immediate effect vide its letter dated 20.06.2018. On this backdrop, it is submitted that if a body recognized by the law or affiliated have no legal basis to carry out the process of admission, examination and issuing pass certificate, the acts of such body is violation of the norms of the Board. The beneficiary of that body institution is legally barred to claim any relief.

[23] The statements need identification of the individual concerns which are subject to proof by this commission and the authorized representative for the petitioners was a coordinator of GMVSS, whose affiliation terms were cancelled by the respondent No.1. Number of schools in remote part of the State for free education of the children particularly under Right to Education Act, 2006 is running. The government of India Schemes namely Sarva Shiksha/Samagra Shiksha is simultaneously run throughout the State to educate children. The present complaint is monitored by the respondent by passing legal and constitutional obligations. The respondent No.2 by a communication dated 29.08.2017 informed respondent No.1 that the students who passed secondary examination are eligible to get admission in Class-XI in the schools affiliated to Tripura Board subject to the conditions that they have passed in the five subjects according to NCERT syllabus.

[24] In view of the above observations and submissions made by the learned counsel, this Court is of the considered opinion that the petitioner has made out a case for interference and accordingly, the prayer as sought for by the petitioner in the present writ petition stands allowed. Consequently, the impugned order of recommendation of the minorities' stands set aside. There is no statistics provided by the respondent No.1

and the respondent No.2 has also not placed anything on record before the minorities' commission. There was also no documents about the students are on record before the concerned respondents hypothetical orders are passed by the Minority Commission. Most importantly it is under the Society Registration Act not a minority recognition institution.

[25] In the result, the present petitions stands allowed and thus disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A.Ghash

