

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 55 of 2017

(Arising out of judgment dated 17.01.2017 passed by the learned Single Judge of this Court in Writ Petition (C) No.1578 of 2015)

1. Raj Kumar College Through its Managing Committee & Chairman, Raj Kumar College, G. E. Road, Raipur (Chhattisgarh)
2. Principal, Raj Kumar College, G. E. Road, Raipur (Chhattisgarh)

---- Appellants

Versus

1. Ku. Koushiki Khakariya, D/o Dr. Anil Khakariya, Aged About 15 Years, Minor Thro Mother Smt. Nanda Khakariya, aged about 45 Years, W/o Dr. Anil Khakariya, R/o C- 80/2, Devendra Nagar, Tahsil & Distt. Raipur (Chhattisgarh)
2. Vatsl Khakariya, S/o Dr Anil Khakariya Aged About 12 Years Minor- Thro Mother Smt. Nanda Khakariya Aged About 45 Years w/o Dr. Anil Khakariya, R/o C-80/2, Devendra Nagar, Tahsil & District- Raipur, Chhattisgarh
3. State of Chhattisgarh, through: Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Raipur, Chhattisgarh
4. District Education Officer, Raipur, Chhattisgarh
5. Chhattisgarh State Commission for Protection of Children Right, Through its Secretary, Raipur, Chhattisgarh
6. Indian Counsil of Secondary Education, Thro its Chairman, CISEC, Pragati House, 3rd Floor, 47,48 Nehru Nagar (In Fact Nehru Place), New Delhi

---- Respondents

And

Writ Appeal No. 46 of 2017

- Indian Council Of Secondary Education Through Its Chairman, C I S C E, Pragati House, 3rd Floor, 47-48 Nehru Place (Wrongly Mentioned As Nehru Nagar In The Writ Petition) New Delhi- 110019

---- Appellant

Vs

1. State of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. District Education Officer, Raipur (Chhattisgarh)
3. Chhattisgarh State Commission for Protection of Children Right, Through its Secretary, Raipur Chhattisgarh.
4. Rajkumar College, Through Its Management Committee And Chairman Rajkumar College, G. E. Road, Raipur (Chhattisgarh)
5. Principal, Rajkumar College, G. E. Road, Raipur Chhattisgarh.
6. Ku. Kaushiki Khakhariya D/o Dr. Anil Khakhariya, Aged About 14 Years Minor Through Mother Smt. Nanda Khakhariya, Aged About 44 Years W/o Dr. Anil Khakhariya, R/o C-80/2, Devendra Nagar, Tehsil And District Raipur Chhattisgarh.
7. Vatsal Khakhariya, S/o Dr. Anil Khakhariya, Aged About 11 Years Minor Through Mother Smt. Nanda Khakhariya, Aged About 44 Years W/o Dr. Anil Khakhariya, R/o C-80/2, Devendra Nagar, Tehsil And District Raipur Chhattisgarh.

---- Respondents

For the respective Appellants	: Shri Abhishek Sinha and Shri RS Marhas, Advocates
For the respective Respondents	: Shri Abhishek Vinod Deshmukh, Advocate and Shri UNS Deo, Government Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Sharad Kumar Gupta

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

16.08.2017

- 1) These Writ Appeals are by the Indian Council of Secondary Education (for short, the "Board") and an educational institution which is affiliated to it, which we refer to hereinafter as the "establishment".
- 2) Under challenge is the judgment on a Writ Petition filed by two minors, who are siblings. The elder one was 14 years old and the younger one about 11 years, when the Writ Petition was filed. Disputes related to questions of education in the Institution and the obligations of that establishment, as well as the Board to grant attendance, right to sit in exam, etc. Fundamentally, certain points were raised with reference to the provisions of the Right of Children to Free and Compulsory Education Act, 2009; for short, the "Act". The learned Single Judge held that the questions referable to that Act may not be germane in as much as the children do not belong to the Below Poverty Line category. That position notwithstanding, by the time the Writ Petition was filed, Writ Petitioner No. 1 had gone beyond the levels in the School to which the Act would have applied. The learned Single Judge granted different reliefs of which, the following are relevant for the purpose of these appeals.

A. On petitioners depositing registration fee within a period of 10 days from today with the respondents No.4 & 5/educational institution, respondent No.6 shall necessarily provide registration to petitioner No.1 Koushiki.

B. The background in which there was shortage of attendance of Ku. Koushiki in the Class IX, respondent No.6 shall pass necessary orders condoning short attendance of the session 2015-16 on or before 10th February, 2017.

C. Immediately after such order of condonation of short attendance of Ku. Koushiki, her results of Class- IX shall be declared by the College.

D. If Ku. Koushiki is declared pass in Class- IX, the educational institution of respondents No.4, 5 shall deal with the case of petitioner No.1 for the session 2016-17 in accordance with their Rules and Regulations subject to the condition that fee for educational session 2016-17, found due and payable by petitioner No.1, is before 15th February, 2017.

3) Having heard the respective learned counsel for the Board, the establishment and the Writ Petitioners, we see that there would have been various situations of confrontation and conflict between the parents of the petitioners and those in control of the management of the establishment. We think that in the larger interest of the two children we should dissuade ourselves from expressing anything touching those matters, which are apparently irrelevant to render a decision in these appeals.

4) While the learned counsel for the Writ Petitioners submitted that there is difference in the data available with the Institution and the Board

regarding the attendance of the Writ Petitioners, we do not see that the petitioners had any ground or reason to charge the Board with arbitrariness, malice, malafides, vindictiveness, abuse of powers or any other vice as regards any of its action, that calls for interference through the Writ Court. That being so, examining the material findings in the impugned judgment, we do not see that there was any reason to issue directions in such manner as would amount to command the Board to perform its functions and duties in the particular manner as dictated through the impugned judgment. We say this because, as the affiliating authority, the Board is one empowered to regulate the affiliated establishment through the terms of its affiliation and controlling powers. It regulates the grant of recognition, approval and continued superintendence of the governance of those activities of the educational institution, which relate to matters under the Board's command. In this view of the matter, if the facts of the case disclose that it is the requirement to consider whether there is any shortage of attendance for the students and if so, whether the shortage is to be condoned; such matters were to be left open for the competent authority, namely, the Board, to consider and decide. This would preserve the power and opportunity of the Board, which is the competent authority in that regard, to decide upon relevant issues in accordance with law.

5) Obviously, as rightly pointed out by the learned counsel for the Writ Petitioners, the plight of the two students need a sympathetic consideration on account of their age and the fact of that two years of their education and academic life would by now have been subjected to the course of this litigation. Therefore, the Board, as the Institution

empowered to exercise its authority, has to make a meaningful effort to consider the various aspects in relation to those students and take a decision which would be equitable and realistic, without ignoring the sympathetic factor that may go into the making of such a decision. We are sure that the Board will do the needful in this regard.

6) For the aforesaid reasons, these Writ Appeals are ordered modifying the impugned judgment and directing that the contents of Clauses- A to D of Para- 24 of the impugned judgment which are quoted herein above will stand modified to the effect that the Board (Respondent- 6 in the Writ Petition) will consider the different relevant matters including providing registration, condonation of shortage of attendance and declaration of results etc., and the Board will give effect to those directions by taking independent decisions by itself in terms of what is stated above. It is directed that the Board will do the requisite within an outer limit of three months from the date of the receipt of a copy of this judgment and appropriate request from the Writ Petitioners.

7) In the light of what we have stated above, the questions as to whether there was wilful suppression of facts by the Writ Petitioners as contended by the establishment, as well as the questions relatable to the application of the Act are left open.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge