

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA No. 29396 of 2024

Swapan Kumar Manna & Ors.

Versus

State of West Bengal & Ors.

Mr. Subir Sanyal, Sr. Adv.

Ms. Sumouli Sarkar

Mr. Sourojit Mukherjee

.....For the petitioners.

Mr. Himadri Barua

Mr. Biswajit Das

.....For the respondent no. 11.

Mr. Sounak Bhattacharya

Mr. A. Halder

Ms. Debanwita Pramanik

.....For the respondent nos. 12, 13 & 14.

Ms. Koyeli Bhattacharya

Mr. Manas Bhattacharya

.....For the WBBSE.

Mr. Sayan Ganguly

.....For the State.

Hearing Concluded On : 16.01.2026

Judgment on : 29.01.2026

Krishna Rao, J.:

- 1.** The petitioners have filed the present writ application praying for a direction upon the respondents to admit the girls of the petitioners in their respective classes in the Secondary Section (Classes V to X) for the Academic Session 2025, setting aside the order dated 2nd September, 2004, passed by the Assistant Secretary of the Board and the order dated 11th April, 2017, passed by the President of the Board.
- 2.** The petitioners also prayed for a direction upon the respondent Board to reintroduce and permit co-education system for girl students in the Sonamui Co-Education School from the Academic Session- 2025. Sonamui Co-Education School was recognized by the Board as a Co-Education Higher Secondary (Old) School on and from 6th January, 1965.
- 3.** One Sadhan Chandra Ghorai and his legal heirs by way of registered Deed of Gift dated 22nd July, 1965, gifted eighty eight (88) Sataks of land in Mouza- Sonamui, District- Paschim Medinipore for the purpose of establishment, development and extension of education both for girls and boys students. Accordingly, Sonamui Co-Education School was

established and was recognized by the Board as a Co-Education Higher Secondary School on and from 6th January, 1965.

- 4.** On 2nd December, 1988, Sonamui Girl's School recognized by the Board which is situated within the ½ km. distance from Sonamui Co-Education School. On 11th December, 1988, the Managing Committee of Sonamui Girl's School adopted a resolution to request the Board to withdraw the co-education status of the Goura Sonamui Co-Education School on the basis of the Board's Circular dated 17th September, 1955 and 16th July, 1956.
- 5.** The Board vide its letter dated 12th August, 1991, informed the Head Master of the Sonamui Co-Education School that the Co-education system should be discontinued gradually year by year with effect from 1993 to 1994 and thereafter the extension of recognition for running co-education school was made provisionally upto 30th April, 1996 on condition to follow the decision communicated to the Board dated 12th August, 1991.
- 6.** The Sonamui Girl's School moved a writ petition before this Court praying for implementation of Memo No. 2829/G/1 dated 12th August, 1991 and restraining the authorities of Sonamui Co-Education School from admitting girl students. This Court by an order dated 6th March, 2008, disposed of the said writ application directing the Board to consider and dispose of the representation of the petitioners dated 24th May, 1993 and to pass a reasoned and speaking order. The Assistant

Secretary of the Board by a letter dated 2th September, 2004, requested the Secretary, Sonamui Co-Education School to discontinue the co-education system from Class V to Class VIII from the academic session as the permission of the same has long been withdrawn by the Board.

- 7.** Some of the guardians of the students of Sonamui Co-Education School filed a writ application before this Court. Initially, this Court passed an ad interim injunction restraining the respondents from giving any effect or further effect to the impugned order dated 2nd September, 2004 and the interim order is extended till 2nd December, 2004. As none appears on behalf of the petitioners, the said writ petition was dismissed for default by an order dated 28th June, 2013.
- 8.** In the year 2011, one Nimai Chandra Matya of Sonamui Girl's School filed a writ petition for implementation of the order dated 2nd September, 2004 and prayed for discontinuation of the co-education system from Class V to Class VIII in Sonamui Co-Education School. This Court by an order dated 11th April, 2012, dismissed the writ application with costs.
- 9.** On 15th July, 2014, the Administrator of the Board passed an order holding that in case of breach of Board's order dated 2nd September, 2004, the Board will take stern view. On 6th January, 2014, some guardians of the girl students have filed a writ petition before this Court being W.P. No. 33388 (w) of 2014 challenging the order passed by the Board dated 15th July, 2014. This Court by an order dated 6th January,

2014, directed that the girl students who have already been admitted in the co-education school to continue their studies in the same school.

- 10.** Some of the guardians have again filed a writ petition before this Court being W.P. No. 1081(w) of 2017 praying for permission for co-education status. This Court by an order dated 23rd February, 2017, disposed of the writ application directing the Board to consider the representation of the guardians dated 4th November, 2016. In compliance of the said order, the President of the Board has passed the impugned order on 11th April, 2017.
- 11.** Mr. Subir Sanyal, Learned Senior Advocate representing the petitioners submits that there are at least 8 Co-Education Schools/ Institutions in the locality of Daspur Block-I and Daspur Block-II within the 4 kms. Out of the said eight Co-Education Institutions, Sonamui Co-Education School is the best school having three storied building consisting of 36 class rooms with separate sitting arrangements for girls and boys with ten (10) ladies toilets and four (4) boys toilets apart from separate urinals both for boys and girls, teachers' toilet and urinal and common room both for boys and girls separately. He submits that the said schools are having all facilities like library, playground, indoor game complex-cum-auditorium, multi gym facilities, solar system/ panel, sound system and laboratory.
- 12.** Mr. Sanyal relied upon the Report of the Committee on the Status of Women in India issued by the Government of India, Department of

Social Welfare, Ministry of Education and Social Welfare in the month of December, 1974 and submits that the Committee was of the view that the girls whose parents had no objection should be free to use co-educational facilities in boys schools. The Commission, however, prescribed specific conditions in the way of mixed staff, teaching of subjects, which appeal to girls such as home craft, music, drawing etc. and separate facilities for co-curricular activities for such Institutions.

13. Mr. Sanyal submits that the Commission has categorically recommended that at the middle and secondary stages, separate schools may be provided in areas where there is a great demand for them. But the efforts to pursue co-education as a general policy at these stages should continue side by side. He further submits that there should be no ban on admission of girls to boys' Institutions.
14. Mr. Sanyal relied upon the judgment in the case of ***Rama Nath Tiwari and Others Vs. Committee of Management and Another*** reported in ***1992 SCC OnLine All 809*** and submits that the Allahabad High Court has held that all educational institutions at all levels should be co-educational. Co-education is healthy and good for the development of the personalities of both boys and girls, if there is co-education boys and girls will know how to interact with each other in a healthy manner and this will also help them toward social adjustability.
15. Mr. Sanyal further relied upon the judgment in the case of ***State of Tamil Nadu and Others Vs. K. Shyam Sunder and Others*** reported

in **(2011) 8 SCC 737** and submits that the right to education under Article 21-A of the Constitution of India be read in conformity with Articles 14 and 15 of the Constitution and there must be no discrimination in quality of education. He submits that uniform education system would achieve the code of common culture, removal of disparity and depletion of discriminatory values in human relations.

- 16.** Mr. Himadri Barua, Learned Advocate representing the respondent no.11 submits that by an order dated 6th January, 2015 in W.P. 33388 (W) of 2014, the Coordinate Bench of this Court directed that the girl students who have already been admitted in the Sikshayatan shall continue to pursue their studies till such time their parents/ guardians wish them to do so or till they take the relevant Madhyamik Parikshas or other examinations. The decision of the WBBSE, conveyed by the memo dated 2nd September, 2004 and memo dated 15th July, 2014 shall not have any effect insofar as they are concern. The Court also directed the authorities of the school not to admit any new girl student in any class henceforth. By an order dated 18th September, 2015, the Court clarified the order dated 6th January, 2015 that the authorities shall not admit any new girl students in Classes V to VIII.

- 17.** Mr. Barua further submits that by an order dated 18th September, 2015, the Court has further directed that the admissions granted to such 33 students would be regularized and the Board shall treat them to be duly admitted students of the Sikshayatan. But the Court

directed the authorities with effect from the next academic session not to admit any new girl student in Classes V to VIII.

- 18.** Mr. Barua submits that again a writ petition was filed being W.P. 1081 (W) of 2017 challenging the order memo dated 2nd September, 2004 and 15th July, 2014, issued by the Board and the Coordinate Bench of this Court by an order dated 23rd February, 2017, disposed of the writ petition by directing concern authorities to dispose of the representation dated 4th November, 2016 in terms of the order passed by this Court in W.P. 33388 (W) of 2014 within a period of three (3) months.
- 19.** Mr. Barua submits that in terms of the order dated 23rd February, 2017, the Board has passed an order on 11th April, 2017, upholding the decision of the Board dated 15th July, 2014 and warned the School not to admit any girl student in the Secondary level. Being aggrieved with the said order, again a writ petition is moved before this Court being W.P. No. 24581 (W) of 2017. The said writ petition is still pending and thus the present writ petition is not maintainable.
- 20.** Ms. Koyeli Bhattacharyya, Learned Advocate representing the West Bengal Board of Secondary Education submits that by an order dated 2nd September, 2004, the Board has requested the School to discontinue co-education from Classes V to VIII as the permission for the same has long been withdrawn by the Board.

21. Ms. Bhattacharyya further submits that in compliance of the order passed by the Coordinate Bench of this Court in C.O. No. 7637 of 1994, the Administrator of the Board passed a reasoned and speaking order dated 15th July, 2014, directing the Boy's School not to continue co-education in violation of the order passed by the Board dated 2nd September, 2004.

22. Ms. Bhattacharyya further submits that decision is taken by the Board taking into consideration that there is sharp decline in the roll of the girl students in girls' school though the girls' school is situated within 100 mtrs. from the co-education school and whereas the co-education school admitted abnormal strength in their school. She further submits that the Board has taken decision in the year 2004 and in the year 2014 and the Coordinate Bench of this Court by an order dated 6th January, 2015, directed the co-education school not to admit any girl student in Classes V to VIII henceforth.

23. The respondent no.3 has filed a report stating that at present in the academic session of the School enrolment of students is 663, and 21 teachers are posted in the said school including 1 (one) contractual teacher and 2 (two) para teachers and the ratio between the teachers and students is 32:1. It is further stated in the report that the West Bengal Board of Secondary Education has the right to allow the school authority to continue with the co-education facilities upon fulfillment of certain conditions.

24. Sonamui Co-Education School was recognised by the Board as a Co-Education Higher Secondary School with effect from 6th January, 1965. Subsequent to the establishment of Co-Education School, in the same vicinity within ½ KM from another school, namely, Sonamui Khirodamoyee Balika Vidyalaya was established on 2nd December, 1988. Initially the said school was up to Class IV and subsequently it was upgraded upto Class X.

25. After establishment of girls' school within ½ KM from the co-education school in the same locality, the Managing Committee of the girls' school requested the Board to withdraw the permission of Co-Education School status from Class V to Class VIII as the girls' school is facing difficulties to have girl students admitted in the girls' school.

26. The Assistant Secretary of the West Bengal Board of Secondary Education by an order dated 2nd September, 2004, requested the Secretary of the Goura Sonamui Kunjabehari Adarsha Sikshyatan to take steps to discontinue co-education from Classes V to VIII from this academic session as the permission of the same has long been withdrawn by the Board.

27. As per direction passed by the Coordinate Bench of this Court dated 6th March, 2008 in C.O. No. 7637(W) of 1994, the Board has passed the following order on 27th June, 2014:

“The Girls’ School is confronted with an existence crisis because of sharp decline in roll strength whereas co-education Boys’ school

situated within 100 meters from the Girls' School has admitted registered abnormal growth at the cost of the roll strength of the Girls. In order to protect and preserve its existence, the Managing Committee of the Girls School has prayed for withdrawal/no further extension of permission for retention of co-education system in the Boys' School. The very existence of Sonamui Kshirodamoyee Balika Vidyalaya Jr. Girls' School is at stake. In the representations dated 24.05.1993 and 18.11.2013 respectively, the Girls School prayed for withdrawal of permission for running co-education in Goura Sonamui Kunjabehari Adarsha Sishayatan. It appears from the material on record that Board withdrew such permission for running co-education from the said Boy's school vide Board's Memo No Mis (LW) 3215/G/04 dated 02.09.2004. The Boy's school challenged the said order of the Board by filling a writ petition being W.P. No. 20039 (W) of 2004 before the Hon'ble High Court and obtained order of interim stay which was extended from time to time. But eventually the said writ petition was dismissed for default on 28.06.13.

There was automatic revival of the Board's earlier order vide Memo No Mis (LW) 3215/G/04 dated 02.09.2004 with the dismissal of the writ application preferred by the Boy's School.

At the time of hearing, Secretary & the Headmaster of the Boy's school submitted that they are running the co-education which they cannot do after revival of the Board's order under vide Memo No Mis (LW) 3215/G/04 dated 02.09.2004 consequent to the dismissal of the writ application.

Since the withdrawal of permission from running co-education is still in force the representation dated 24.05.1993 may be disposed of with a direction to the Boy's school not to continue co-education in violation of the Board's direction given under vide Memo No Mis(LW) 3215/G/04 dated 02.09.2004 because the Board still strict to its decision as conveyed in the said memo.

If the Boy's school still ventures to continue the co-education in breach of the direction contained Board's Memo No. Mis(LW) 3215/G/04 dated 02.09.2004, the Board be left with no other option than to take stern view in this matter.

The representation file by the petitioner dated 24.05.1993 & 28.11.13 are disposed of accordingly."

28. Being aggrieved with the order dated 27th June, 2014, some of the parents of girl students of Goura Sonamui Kunjabehari Adarsha Sishayatan have filed writ petition being W.P. No. 33388 (W) of 2014. The Coordinate Bench of this Court disposed of the said writ petition on 6th January, 2015 by passing the following order:

"It appears on perusal of the order of the Administrator that there was an earlier order dated 2nd September, 2004 passed by the WBBSE discontinuing co-education from Classes-V to VIII in the said Sikshayatan, which was communicated by the Assistant Secretary (G), WBBSE vide memo dated 2nd September, 2004; such memo was challenged before this Court in W.P. 20039 (W) of 2004 and interim stay was obtained; such writ petition was ultimately dismissed for default on 28th June, 2013 and the said order not having been recalled, the memo dated 2nd September, 2004 revived, as a result of which the authorities of the said Sikshayatan were under a legal disability to admit girl students in Classes-V to VIII.

It further appears that the WBBSE had taken a decision to discontinue co-education facilities in the said Sikshayatan accepting the representation made by the authorities of Sonamui Kshirodamoyee Balika Vidyalaya (hereafter the 'girls' school'). It was the claim of the authorities of the said girl's school that there was an abnormal increase of girls students in the said Sikshayatan where for want of adequate number of girl students, the girls' school, which was situated near to the said Sikshayatan, was immensely suffering and on the verge of closure.

I need not examine the controversy as to whether the WBBSE was justified in discontinuing the co-education facilities in the said Sikshayatan, since a decision to that effect has been taken more than a decade ago. However, having regard to the fact that such order was challenged before this Court and such challenge in effect has failed by reason of dismissal of W.P. 20039 (W) of 2004 for default, I am of the further view that interest of justice would be best served if the equities are balanced and this writ petition is disposed of at this stage by issuing necessary direction.

Accordingly, I direct that the girl students who have already been admitted in the said Sikshayatan shall continue to pursue their studies till such time their parent/guardians wish them to do so or till they take the relevant Madhyamik Parikshas or other examinations, and the decision of the WBBSE, conveyed by memo dated 2nd September, 2004 and memo dated 15th July, 2014 (enclosing copy of the impugned order of the Administrator of the WBBSE) shall not have any effect insofar as they are concerned. However, the authorities of the said Sikshayatan shall not admit any new girl student in any class henceforth.

It is made abundantly clear that notwithstanding the arrangement to be worked out by this order, the WBBSE shall be at liberty in the interest of education of students of the locality to take any further decision that might be necessary including review of the decision as communicated by the memo dated 2nd September, 2004.

The writ petition stands disposed of.”

29. After the order dated 6th January, 2015, one Civil Application being CAN No. 1559 of 2015 was filed for clarification of the order dated 6th January, 2015 and a Contempt Application was also filed being CPAN No. 175 of 2015 on the allegation of violation of the said order. The Court has taken up both the applications together and passed the following order on 18th September, 2015 which reads as follows:

6. *None has disputed that by an order dated 02.09.2004, the Board had restrained the authorities of the said Sikshayatan from admitting girl students in Classes V to VIII. There was no restriction insofar as admission of girl students in Classes IX to XII. Therefore, the order dated 06.01.2015 cannot be read in a manner restricting the right of the applicant in CAN 1559 of 2015 to admit students in Classes IX to XII. The portion of the order dated 06.01.2015 extracted (supra) in paragraph 2 shall be construed accordingly i.e. the authorities of the said Sikshayatan are entitled to admit girl students in Classes IX to XII till such time a contra order is passed by the Board in this regard.*

7. *Insofar as the admission of 33 students in Classes V, VI and IX are concerned, allegedly, in violation of the order dated 06.01.2015, I am satisfied that due to communication gap the applicant in CAN 1559 of 2015 proceeded to make such admissions. There was no ill motive of the applicant to lower the dignity, majesty and prestige of this Court.*

8. *In this view of the matter, I direct that the admissions granted to such 33 students would be regularized and the Board shall treat them to be duly admitted students of the said Sikshayatan. However, it is made clear that with effect from the next academic session, the authorities of the said Sikshayatan shall not admit any new girl student in Classes V to VIII.*

9. *I have considered the submission of Mr. Barua that Sonamui Kshirodamoyee Balika Vidyalaya has since been granted recognition as a high school (upto Class X) and that the authorities of the said Sikshayatan should not be allowed to admit students even in Classes IX and X for the same reason communicated in the Board's order dated 02.09.2004.*

10. *I am afraid, no such order can be passed for the simple reason that it is for the Board to make an appropriate order in this regard. Since the Board has not yet passed any order restricting the authorities of the said Sikshayatan from admitting*

students in Classes IX and X, the prayer made by Mr. Barua does not merit acceptance.

11. *CPAN 175 of 2015 and CAN 1559 of 2015 stand disposed of, without costs.*

12. *The other portions of the order dated 06.01.2015 shall stand intact.”*

30. Again some of the parents of the girl students have filed a writ application being W.P. No. 1081 (W) of 2017, challenging the order dated 2nd September, 2009 and 15th July, 2014. The said writ petition is disposed of on 23rd February, 2017 by passing the following order:

“Accordingly, without going into the merit of the case, the writ petition is disposed of by directing the concerned authorities to dispose of the representation dated 4th November, 2016 so filed by the petitioners in terms of the order passed by this Hon’ble High Court in W.P. 33388 (W) of 2014 as also after affording an opportunity of hearing to all the interested parties within a period of three months from the date of communication of this order.”

31. In compliance of the order dated 23rd February, 2017, the impugned order is passed by the Board on 11th April, 2017 which reads as follows:

“After thorough scrutiny of relevant documents and taking into account the submission made at the time of hearing, it is revealed that the total roll strength of the girls’ school is around 200. The school has been converted to a sponsored institution on 18.05.2015. But what is strange is that Goura Sonamui K.B. Adarsha Sikshayatan has admitted 33 girls students in the year 2015 violating the order dt. 06.01.2015, passed by the Hon’ble High Court in W.P. No. 33388 (W) 2014, and also the directive issued by the W.B.B.S.E., conveyed vide Memo No. 178/C/1 (law) dt. 15.07.2014. The H.M. of the Co-education school

has himself admitted this fact at the time of hearing. There is at present 52 girls students in Class X and 53 girls students in Class IX.

In view of the above, I, President, W.B.B.S.E. dispose of the representation of the petitioners dt. 04.11.2016 by uploading the earlier decision conveyed Vide Memo No. 178/C/1 (Law), dt. 15.07.2014. The authority of Goura Sonamui Kunja Behari Adarsha Sikshayatan is warned once again not to admit anymore girls students in the secondary level. Any dilly-dally or violation of this directive will invite stern measures.”

32. Though by an order dated 6th January, 2015, this Court directed the Co-Education School not to admit any girl student in any class henceforth and given liberty to the WBBSE in the interest of education of students of the locality to take further decision that might be necessary including review of the decision dated 2nd September, 2004. The order dated 6th January, 2015, was modified/ clarified by an order dated 18th September, 2015, allowing the co-education school to admit girl students in Classes IX to XII till such time, contra order is not passed.

33. The finding of the Board in the impugned order is that the total strength of the girls' school is 200 and the school is converted to a sponsored institution on 18th May, 2015, but the Co-Education School admitted 33 girls' student in violation of the order passed by this Court dated 6th January, 2015 and the direction of the Board dated 15th July, 2014. As regard to the violation of the order dated 6th January, 2015, is concern, this Court in a contempt proceeding held that due to communication gap, the Co-Education School proceeded to make such

admission and there was no ill motive of the Co-Education School to lower down the dignity, majesty and prestige of this Court. Thus the finding of the Board is not correct and in contrary to the order passed by this Court dated 18th September, 2015. As regard to the the violation of the directives, this Court has already confirmed the admission of the girl students, thus, now it cannot be said that the Co-Education School authorities have violated the directives dated 15th July, 2014.

34. By the impugned order, the Board has affirmed the decision of the Board dated 15th July, 2014. The only ground for withdrawal of co-education system by the Board is due to sharp decline in roll strength in the girls' school and dismissal of writ application filed by the Boys School against the order dated 2nd September, 2004. The writ petition was dismissed not on merit. The same was dismissed for default. This Court by an order dated 6th January, 2015, given liberty to the Board in the interest of education of students of the locality to take further decision that might be necessary including review of the decision dated 2nd September, 2004.

35. The Board of Secondary Education, West Bengal issued a Circular No. 37/56 dated 16th July, 1956 wherein directives have been issued in connection with the girl's education in the State. In the said Circular, directions for Co-Education was also issued which reads as follows:

“(1) Co-education: The Board of Secondary Education, West Bengal has not accepted the principle of co-education as such in schools. Girl

students are not admitted in Boys' Schools and vice versa, as general rule.

Only in exceptional circumstances the Board grants permission for the admission of a limited number of girl students subject to the following conditions being fulfilled as laid down in Board's Circular No. 48/55 dated 17th September, 1955:

- (i) Separate sitting arrangement for girls.
- (ii) Separate common room facilities.
- (iii) Separate sanitary conveniences.
- (iv) Escort for girls to and from the school.
- (v) That at least one lady teacher is appointed in the School.

[It is, however, felt that the appointment of such a lady teacher may not be made unless the number of girl pupils reading in a Boys' School exceeds 30 in the two top classes.] Such a lady teacher when appointed should be co-opted as a member of the Managing Committee.

The following additional conditions are laid down in the light of experience:

- (i) *The total number of students in a class including the number of girl students should not exceed the prescribed number of students for a class and the area per student shall be provided at the rate not less than 10 sq.ft per pupil in view of the fact that separate sitting arrangement for the girl students will have to be provided in a class of mixed pupils and as such the accommodation available in such a classroom should be more than what is ordinarily accepted as the floor space per pupil, i.e. 8 sq.ft per pupil.*
- (ii) *The total number of girl students to be admitted in Classes VIII and below should not ordinarily exceed 30.*
- (iii) *Girl students in Classes IX and X will not ordinarily be permitted unless there are strong justifications for this and each case will be dealt with according to its merits.*
- (iv) *Permission for admission of girl students in Classes IX and X shall be on a temporary basis subject to the condition No. (v) Under*

para 1 above. But guardians in such cases shall be asked to get their girls admitted in regular Girls' schools as early as possible.

(vi) Permission for admission of girls students in any class shall not be given where there are Girls' school in the neighborhood within a radius of one mile in a city or a town, and within two miles of a school situated in rural areas; and also if such Girls' schools in the neighborhood are in a position to admit the additional number."

36. Sonamui Co-education School was recognized by the Secondary Education on 6th January, 1965. Sonamui Girls' School was recognized on 2nd December, 1988. After recognition of Girls' School and as per the request of the said school, the Board by a Memo No. 2829/G/1 dated 12th August, 1991, directed the co-education system should be discontinued from the Session 1993-1994 and running co-education school was made provisionally till 30th April, 1996. Thereafter several writ proceedings have been initiated as described above. In the month of December, 1974, the Government of India, Department of Social Welfare, Ministry of Education and Social Welfare, published a report the Co-Education system was also taken into consideration which reads as follows:

“6.65 *The imbalances just pointed out make it difficult to put forward a set pattern of recommendations. Besides the general problems of education, there are certain specific issues on which it is not feasible to insist upon a uniform pattern for the whole country. One such example is co-education. This issue has been examined by various Committees and Commissions.*

6.66 *In 1953, the Secondary Education Commission observed that there could be no hard and fast policy with regard to co-education as*

social attitudes differed very greatly in this Respect. The Commission, therefore, recommended:

- (i) *opening of separate schools wherever possible as they were likely to offer better opportunities for physical, social and mental development of the girls,*
- (ii) *girls whose parents had no objection should be free to use co-educational facilities in boys' schools. The Commission, however, prescribed specific conditions in the way of mixed staff, teaching of subjects which appeal to girls such as home craft, music, drawing, etc. and separate facilities for co-curricular activities for such institutions.*

In 1959, the National Committee on Women's Education recommended that co-education should be adopted as a general policy at the primary stage, but as a transitional measure, separate schools may be provided in places where there was a strong public demand for them and enrolment of girls was large enough to justify separate schools. At the middle and secondary stages more co-educational schools should be started, subject should be started, subject to the condition of adequate attention being paid to special needs and requirements of girls. Separate secondary schools for girls should, however, be provided specially in rural areas. The Committee while recommending alternatives in areas where co-education was not acceptable, suggested efforts to remove difficulties and apprehensions against co-education by providing right type of staff, encouraging parental visits and the appointment of women teachers and women heads in co-educational institutions.

6.72 *In our opinion, the considerations of efficiency, economy as well as equal opportunity require the acceptance of co-education as a long term policy. In view of the divergent social attitudes, however, we recommend:-*

- (i) *Co-education should be adopted as the general policy at the primary level;*
- (ii) *at the middle and secondary stages separate schools may be provided in areas*

where there is a great demand for them. But the effort to pursue co-education as a general policy at these stages should continue side-by-side;

(iii) at the university level co-education should be the general policy and opening of new colleges exclusively for girls should be discouraged;

(iv) there should be no ban on admission of girls to boys' institutions;

(v) wherever separate schools/colleges for girls are provided, it has to be ensured that they maintain required standards in regard to the quality of staff, provision of facilities, relevant courses and co-curricular activities;

(vi) acceptance of the principle of mixed staff should be made a condition of recognition for mixed schools. There is a misgiving, however, that this provision may lead to exclusion of girls from some schools. Therefore, it is suggested that this measure may be reviewed a few years after it is implemented;

(vii) wherever there are mixed schools, separate toilet facilities and retiring rooms for girls should be provided."

37. In the meantime Right of Children to Free and Compulsory Education (RTE) Act, 2009, came into force. In the case ***State of Tamil Nadu and Others Vs. K. Shyam Sunder and Others*** reported in ***(2011) 8 SCC 737***, the Hon'ble Supreme Court held that:

"21. The right to education is a fundamental right under Article 21-A inserted by the Eighty-sixth Amendment of the Constitution. Even before the said amendment, this Court has treated the right to education as a fundamental right.

22. There has been a campaign that right to education under Article 21-A of our Constitution be read in conformity with Articles 14 and 15 of the Constitution and there must be no discrimination in

*quality of education. Thus, a common syllabus and a common curriculum is required. The right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the ground of its economic, social and cultural background. Arguments of the propagators of this movement draw support from the judgment of the US Supreme Court in *Brown v. Board of Education* overruling its earlier judgment in *Plessy v. Ferguson* where it has been held that “separate education facilities are inherently unequal” and thus, violate the doctrine of equality.*

22. *The propagators of this campaign canvassed that uniform education system would achieve the code of common culture, removal of disparity and depletion of discriminatory values in human relations. It would enhance the virtues and improve the quality of human life, elevate the thoughts which advance our constitutional philosophy of equal society. In future, it may prove to be a basic preparation for the uniform civil code as it may help in diminishing opportunities to those who foment fanatic and fissiparous tendencies.*

24. *In *State of Orissa v. Mamata Mohanty*, this Court emphasised the importance of education observing that education connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The Court further relied upon the earlier judgment in *Osmania University Teachers' Assn. v. State of A.P.*, wherein it has been held as under:*

“30. ... Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs.”

The case at hand is to be proceeded with keeping this ethical backdrop in mind.”

38. This Court finds that the Board has withdrawn Co-Education System of Classes V to VIII only on the ground that the Girls' school is confronted with an existence crisis because of sharp decline in roll strength. There is no allegation that the Co-Education School has violated any terms and conditions. Whereas the petitioners have given details of eight co-education schools within the radius of four (4) kilometers adjacent to each other including the petitioner's Co-Education School but the Board has taken decision for withdrawal of Co-education system for Classes V to VIII of the petitioner's school without any cogent reasons.

39. In the case of ***Rama Nath Tiwari & Ors. Vs. Committee of Management and Another*** reported in ***1992 SCC OnLine All 809***, the Allahabad High Court held that:

“6. Article 39(f) of the Constitution states that “The State shall in particular direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner.

7. In my opinion development in a healthy manner for children is best possible in co-education. The right to education in Articles 41 and 45 must be construed consistently with Article 39(f).

8. In a paper entitled—

“A PSYCHOLOGICAL PERSPECTIVE ON ADOLESCENCE: A RATIONALE FOR CO-EDUCATION.”

9. Ms. Komila Thapa, Lecturer in the Psychology Department in the Allahabad University has said.” It would be tenable to argue that the co-educational system, as opposed to same-sex Schools would provide an opportunity for adolescents to interact with the same-gender as

well as opposite-gender peer groups. This would prepare the ground for a healthier, more open interaction between the sexes and would promote healthy attitudes towards issues of sexuality. Also, as co-education offers a first-hand opportunity to observe the behaviour patterns of other adolescents of the same and opposite-gender, the advantages accruing would be two-fold:

- (i) the adolescent would be able to sharpen and refine his/her personal, identity.*
- (ii) sex-role identities would be more clearly articulated and defined therein. Also ensuring problems would be more easily resolved.*

10. *Thus the adolescent's perceptions of issues of identity, friendship and sexuality, all critical and significant issues at this juncture as well as for future well-being would be influenced by experiences in co-educational system. It is hoped that as this system enables a freer interaction between the two sexes, the adolescent would not always "meander through a terrain, hewn out of fantasies of intimacy, a landscape whose contours are shaped by the more obscure desires and fears men and women entertain in relation to each other."*

40. It is the specific case of the petitioners that Sonamui Co-education School is the best school in the said locality. The school is situated in three storied building consisting of 36 class rooms with separate sitting arrangements for boys and girls and other facilities of urinals and toilets. The schools are having good library, playground within the school campus, indoor game complex-cum-auditorium and laboratory and other facilities.

41. This Court finds that the Board has not considered the facilities available in the Co-Education School, the Right of Children to Free and Compulsory Education Act (RTE), 2009 and desires of the parents and

girl students of the said locality. Time and again, the parents of girls' student filed writ proceeding challenging the decision of the Board. The Board has taken into consideration the request made by the Sonamui Kshirodamoyee Balika Vidyalaya that there is sharp decline in roll strength due to existence of Co-education School is situated within 100 mtrs. from the girls school but has not taken into consideration that the Co-education School is established in the year 1965 and still the parents of the girls' student intending that their daughters be studied in the Co-Education School.

- 42.** Co-education is a setup where the boys and girls studied together under one roof without any distinction. The Co-education system is a necessity in the present time due to several reasons. Under this system, boys and girls receive physical, moral values and academic education together. It allows boys and girls to compete each other. Students studying in co-education schools are exposed to diversity during early school life.
- 43.** Considering the above, this Court finds that the reasons by which the Board has taken the decisions for withdrawal of Co-Education System from Class V to Class VIII is not justifiable and accordingly the order dated 2nd September, 2004, 15th July, 2014 and 11th April, 2017 are set aside and quashed.
- 44. WPA No. 29396 of 2024 is allowed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)