

(2005) 02 CAL CK 0021
In the Calcutta High Court
Case No : Writ Petition No. 1546 of 2004

Abdus Salam Mahalder and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

West Bengal Board of Madrasah Education Act, 1994 — Section 20

Citation : (2005) 4 CHN 303

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Judgement

Indira Banerjee, J.—This writ application is directed against the action of the respondents in not recognising Benadaha A. K. M. Junior High Madrasah (hereinafter referred to as the Madrasah).

2. The petitioners have, inter alia, challenged an order dated June 28, 2004 of the West Bengal Board of Madrasah Education rejecting the prayer for recognition of the Madrasah.

The grounds for rejection of the Madrasah as set forth in the impugned order are as follows:

"1. The said Madrasah was established only in 1993. Violating the G. O. 643-Edn(S) dt. 5.6.86.

2. The building and other infrastructure are poor. So is the attendance of the students.

3. There is another Madrasah at a distance of 5 k.m.

The (S. E.) Deptt., Govt. of W. B. also not recommended for granting recognition of the Madrasah".

The Govt. order referred to in the order impugned provides for approval to set up a Madrasah. The directions in the Government order are not mandatory and

cannot be a ground for rejection of an application for recognition of a Madrasah.

3. The fact that a Madrasah should be established in 1993 cannot also be a ground for rejection of an application for recognition.

4. The third ground for rejection is equally misconceived. The location of other schools and Madrasah in the vicinity cannot be a ground for rejection of an application for recognition.

5. There can be no doubt that a school or a Madrasah, as the case may be, applying for recognition must comply with the rules and regulations for recognition as stipulated by the Board/Council to which affiliation is sought.

6. In the instant case, the West Bengal Board of Madrasah Education is within its rights in laying down the terms and conditions for recognition of institutions. Needless to mention that compliance with the terms and conditions notified and published are mandatory for recognition. In order to obtain recognition the Madrasah must have the requisite infrastructure. The classes must be of prescribed size. The Madrasah should have adequate facilities such as facilities for drinking water, toilets and the like.

7. In the instant case the prayer for recognition of the Madrasah has been rejected on the vague allegation of the infrastructure being poor and also the attendance of the students being poor. No particulars of the alleged deficiencies have been disclosed.

8. As rightly argued by Mr. Ali, appearing on behalf of the petitioners, the right to education would be meaningless unless an institution is recognised, for students from such institutions would neither be able to secure admission in other institutions nor be able to appear for Board examinations.

9. It is true as argued by Mr. Panja that the right to recognition is not a fundamental right. However, recognition cannot be arbitrarily refused, for arbitrary refusal of recognition renders the right to education meaningless for all practical purposes.

10. It is reiterated that the requisite rules and regulations are required to be complied with. If, however, the rules and regulations for recognition are complied with an institution cannot be arbitrarily denied recognition.

11. Relying on Section 20 of the West Bengal Board of Madrasah Education Act, Mr. Panja pointed out that recognition could only be granted if the State Govt. recommended recognition. In the instant case the State has not recommended the Madrasah for recognition.

12. For recognition of an institution, the approval of the State Govt. might be necessary. The State Govt. cannot, however, arbitrarily withhold recognition of an institution without assigning any reasons. If an institution complies with the requisite rules and regulations for affiliation/recognition recommendation of the institution for recognition cannot be withheld unless on the basis of materials on

record the appropriate authorities of the State Govt. are of the considered view that recognition of the concerned institution would not be in public interest having regard to the antecedents of the founders and teachers and/or the nature of the instructions sought to be imparted in the institution.

13. In the instant case no cogent reasons are forthcoming as to why the Madrasah has not been recommended for recognition, save and except the vague averment of the infrastructure and the attendance of the students being poor.

14. An affiliating body would be within its rights in denying recognition if the rules and regulations for recognition are not fulfilled. It would, however, be mandatory to disclose the exact nature of the deficiencies for which recognition is refused to enable the institution concerned to remove the deficiencies. If, for example, recognition of a Madrasah is refused on the ground of the class rooms not being of prescribed size, it would be incumbent for the authorities concerned to record the required size of the class rooms as also the size of the class rooms of the Madrasah seeking recognition, in the order of rejection. Similarly all other deficiencies would have to be specified in details. It is often found that the State Govt. withholds recommendation for recognition of institutions in apprehension of anticipated claims for aid from such institutions after recognition.

15. Aid and recognition are entirely separate issues. The grant of aid and/or assumption of other financial liability is subject to the financial capacity of the State Govt. Recognition cannot, however, be withheld on the apprehension of future claims for aid. Mr. Panja relied on the judgment of a Division Bench in the case of West Bengal Board of Secondary Education v. State of West Bengal in support of his contention that teachers had no right to institute writ proceedings seeking recognition of an institution. Only the Managing Committee of an institution could initiate such proceedings.

16. Mr. Ali, however, pointed out that at least five of the writ petitioners in the instant case are members of the Managing Committee. The Secretary and the President of the Managing Committee are the writ petitioners. In the aforesaid circumstances, the question of rejecting the writ applications on the ground of the writ petitioners not having locus standi to initiate the writ proceedings cannot and does not arise.

17. Mr. Panja also cited the decision of the Supreme Court reported in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and argued that the Court could not compel the State to assume financial liability irrespective of the economic capacity of the State. There can be no dispute with the aforesaid proposition. It is axiomatic that additional financial liability has to be linked to the economic capacity of the State. However, as already held above, recognition and aid are entirely separate issues and recognition cannot be withheld in anticipation of claims for aid. An application for aid would have to be considered on its own merits having regard to all relevant factors including the economic capacity of the State. In response to the argument of Mr. Ali that many

institutions with inadequate facilities have been granted affiliation, Mr. Panja cited the decision of the Supreme Court reported in *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, and argued that Article 14 could not have negative application. There can also be no dispute with the aforesaid proposition of law. However, if discretion is used to relax qualifications, such discretion must be exercised if the facts and circumstances warrant exercise of discretion to relax qualifications.

18. My attention has also been drawn to an unreported judgment dated 15th October, 2004 of a Division Bench of this Court comprising Their Lordships the Hon"ble Mr. Justice Barin Ghosh (as His Lordship then was) and the Hon"ble Mr. Justice Alope Kumar Basu in MAT 2951 of 2003 where Their Lordships held that the grant of aid including its nature and content would depend upon the resources of the Government.

19. As observed above, there is no dispute with the aforesaid proposition. There is also no dispute with the proposition that the rules and regulations for recognition must be complied with by an institution seeking recognition. The order impugned is totally vague. No reasons have been disclosed as to why recommendation of the institution is not forthcoming. The allegation of inadequate infrastructure is totally vague and devoid of material particulars. The impugned order is, therefore, set aside and quashed. The application for recognition of the Madrasah shall be considered afresh in accordance with law in the light of the above observations. The respondent may cause reinspection of the Madrasah by the District Level Inspection Team. If such reinspection is deemed necessary, such reinspection shall be held within 2 weeks from the communication of this order. The report of the D.L.I. Team shall be forwarded to the District Inspector of Schools within a week from the date of inspection. The District Inspector of Schools shall forward the report to the Director of School Education within 2 weeks from the date of the receipt of the same. The Director of School Education shall thereafter within 4 weeks forward the report to the Secretary, School Education Department with his comments/opinion. The Secretary, School Education Department shall thereafter within 6 weeks take a decision on the question of recommendation of the school for recognition in the light of the observations made in this judgment and order and forward the same to the West Bengal Board of Madrasah Education. The West Bengal Board of Madrasah Education thereafter within 2 months shall take a final decision on the application for recognition of the Madrasah in accordance with law after giving the petitioners and others concerned opportunity of hearing. The decision of the West Bengal Board of Madrasah Education shall be communicated to the petitioners within a week from the date thereof. In considering the application for recognition all previous reports of the D.L.I. Team should also be taken into consideration.

20. The writ application is disposed of.

21. Let xerox certified copy of this judgment be supplied to the parties, upon

compliance of all formalities.