

(2016) 02 CAL CK 0080
In the Calcutta High Court
Case No : W.P.No. 20880 (W) of 2010.

Anima Bera and another.

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 CalLJ 150

Hon'ble Judges : Arindam Sinha, J.

Bench : Single Bench

Advocate : K. K. Moitra, Id. sr. Advocate, Anup Kr. Lahiri, Piyush Kanti Hazra, A. Santra, Sabyasachi Hazra, Biswaranjan Bhakat, Advocates, for the Appellant; Sadananda Ganguly, Addl. G.P, Debapratim Banerjee, Advocates and Santanu Kr. Mitra, Advocate, for the Respo

Final Decision : Disposed Off

Judgement

Arindam Sinha, J - Two teachers of Panchapalli Junior High School in the District of Purba Medinipur are the petitioners in this writ petition. They have prayed for, inter alia, issuance of mandamus to command the respondent authorities concerned to act in terms of law and to accord necessary recognition to the said school forthwith.

2. Mr. Moitra, learned senior advocate appeared on behalf of the petitioners and submitted there was an order dated 7th December, 2009 passed by a Division Bench of this Court, accepted by the State and the Board. That order was made in an appeal arising out of a writ petition in which the subject matter of challenge was letter dated 27th October, 1998 written by the Board to the Secretary of the said school. By that letter six reasons were given by the Board as to why the claim for recognition of the school stood rejected. The Division Bench by its said order had made it abundantly clear that a DLIT team, to once again inspect, would be entitled only to examine the infrastructure and submit report to the appropriate authority.

3. In course of earlier hearings Mr. Ganguly, learned advocate, Additional Government Pleader appearing on behalf of the State had submitted that the report of the DLIT prepared pursuant to the said order of the Division Bench was a result of utter negligence on the part of the official concerned, particularly the District Inspector of Schools who had signed the same. That report suffers from non-application of mind inasmuch as what appears therefrom to be a recommendation for recognition is actually the opposite. The report according to Mr. Ganguly, did not recommend recognition of the school of the petitioners but unfortunately by reason of negligence and omission, the reasons for not recommending were not given in the said report.

4. Responding to the above submissions Mr. Moitra had relied on a judgment of the Supreme Court in the case of *State of Punjab and Ors. v. Gurdev Singh* reported in AIR 1991 SC 2219 in particular paragraphs 7 and 8 therein. The said Court had quoted from Administrative Law 6th Edition at page 352 wherein Professor Wade had summed up the principles regarding validity of an order. The said Court then went on to express the following views :-

"8. It will be clear from these principles the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for."

5. Mr. Ganguly submitted further that by the inspection report relating to the school of the petitioners, there was recommendation made regarding another school as well as would appear from the minutes of the meeting of the DLIT held on 26th November, 2014 signed by the District Inspector of Schools, (S.E.), Purba Medinipur who chaired the same as the President thereof. He produced the DLIT inspection report regarding the said other school being Shyamchak Milani Vidyapith. He, in that context referred back to the said minutes and the recommendation in the said report to submit that both were recommendations in the negative. He then relied on memo dated 23rd November, 2015 issued by the Commissioner of School Education, West Bengal regarding the other school, the recognition of which was declined by the said memo. A copy of the said memo was handed up and kept in the file.

6. The two reports follow a similar format. There is a clause for recommendation or not. Both the reports carry the requirement under the said clause to the effect that if the school is not recommended, the reasons for non-recommendation or specific comment along with reasons for non-recommendation should be made clear or written clearly. It appears from the report pertaining to the inspection made by the DLIT of the petitioners' school pursuant to the said order of the appeal Court, under the clause for recommendation the printed words "and or not recommended" were struck out and the words "from class-V to VIII class" written in pen. Under the requirement of reasons for non-recommendation to be written clearly, the said report does not disclose any such reason.

7. On the other hand, the report relating to the said other school also forwarded as aforesaid, under the clause "recommended for up-gradation or not recommended" it states "Recommendation with following observations". The observations have been penned under the requirement of the proposal of the school for up-gradation "if not recommended then specific comment along with reasons for non-recommendation to be made clearly". The observations made are quoted below:-

"Forwarded with following observation:-

(i) The report sent to you according to order Hon"ble High Court W.P. No. 21513(W) of 2009 of 19.04.2012 and the school education department 124/1(3)-SE/S/3S-22/2013 dated 18.10.2013 and 78 SE, 1S-3S-99/12 dated 14.10.2013

(ii) The S/A maintained organiser teaching and non-teaching staff, which is highly irregular.

(iii) This report is sent to you as per recommit at Savadhipati PMZP, B.D.O, Local MLA"

8. On perusal of the two recommendations it is clear to this Court that the school of the petitioners was recommended for recognition. The other school met with a recommendation in the negative and the report carried the observations quoted above which stated clearly as to why claim for up-gradation of that school was not being recommended. On the facts and the purport of the reports as they appear, this Court finds the school of the petitioners had obtained a recommendation for recognition. The concerned Authorities being the State and the Board must act on that recommendation. The writ petition succeeds. The recognition to the school as recommended by the report of the DLIT must be acted upon by the State and the Board within a period of six weeks from the date of communication of a copy of this order to be made by the petitioners.

9. The writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the learned advocates for the parties on usual undertakings.