

(2014) 12 CAL CK 0112
In the Calcutta High Court
Case No : W.P. 32801(W) of 2013

Darsan Sarkar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 3
West Bengal Board of Secondary Education Act, 1963 — Section 28, 28(2)

Citation : (2014) 12 CAL CK 0112

Hon'ble Judges : Sahidullah Munshi, J

Bench : Single Bench

Advocate : Milon Ch. Bhattacharya and Sulagna Bhattahcharya, Advocate for the Appellant; Swapan Kumar Pal, Advocate for the Respondent

Judgement

Sahidullah Munshi, J.—This writ petition has been filed by the members of an Organizing Managing Committee of junior High School named Panisala Junior High School. In this writ petition the petitioners have challenged an order dated 11th October, 2007 (Annexure P-7) passed by the Secretary, West Bengal Board of Secondary Education granting recognition to the school as a new set up Four-Class Junior High School and a order dated 7th April, 2011 issued by the Secretary, West Bengal Board of Secondary Education under letter No. 78/C (Law) dated 7th April, 2011 with regard to recognition of Panisala Junior High School, Dakshin Dinajpur and thereby granting first recognition to Panisala Junior High School as Four-Class Junior High (V to VIII) with retrospective effect from 1st May, 2001 but with a specific bar that there will be no financial assistance. In brief, the writ petitioner's case is as follows:-

a) The Organizing school has been functioning from its inception in 1978 and continuous functioning of the said school stands confirmed by District Level Inspection Team report both in 1995 and 1996. It has been stated that the respondent No. 3, District Inspector of Schools (S.E.) Dakshin Dinajpur, himself observed in his memo dated 26th July, 1996 that the school is situated in an

area which is pre-dominantly inhabited by the Scheduled Caste people and that considering the backwardness of the locality it seems that the school was playing a role in the matter of educating backward children of the society. It is the case of the petitioner that despite all these observations, the District Level Inspection Team tried to depict the school as a newly set up one. The grant of recognition to the said school was rejected earlier by an order dated 18th November, 1997 on purported grounds that the school did not apply to the Board for recognition on or before 1975 with prescribed amount of fees. Although, the school started functioning without prior permission from the Government and that there was no room other than classrooms which were also not up to the mark and that there was no existing functioning of the school. However, the said order was set aside and the Executive Committee of the Board was asked to consider the prayer for recognition. Once again, the prayer for recognition was rejected by a memo dated 9th June, 1999, however, it would appear from the District Level Inspection Team report dated 25th November, 2000 that the team recommended for recognition of Four-Class Junior High School on 11.01.2001. Pursuant to the said District Level Inspection Team report a provisional recognition was granted with effect from 1st May, 2001. The said recognition was communicated by the Secretary, West Bengal Board of Secondary Education to the Secretary, Organizing Committee of Panisala Junior High School by his memo dated 20th June, 2001. The said recognition was made provisional for a period of one year as a new set up school with effect from 1st May, 2001 with condition and instruction that the school shall take immediate steps for appointment of teaching staff on recommendation of the West Bengal Regional School Service Commission in respect of the region concerned. After observing the procedure defining in Rule 6(2) and Rule 6(3) of the West Bengal School Service Commission Rules, 1997 and in respect of non-teaching staff by obtaining names from the Employment Exchange as also by observing other procedure in accordance with the existing recruitment rules issued by the Department of School Education, West Bengal.

2. Aggrieved by the said communication dated 20th June, 2001, particularly the grant of provisional recognition to the Junior High School as a newly set up one school, the petitioner filed a writ petition being W.P. No. 5132(W) of 2001. On the said writ petition this Hon"ble Court passed an order on 2nd April, 2003. In the said order it has been observed and directed as follows:-

"On two occasions in the pursuit of the petitioners" attempt to get the school recognised efforts were frustrated by the dodging tactics. Earlier two reports filed by the D.L.I.T. and the necessary comments and recommendations were also made. However, the petitioners did not find favour of the Board with the order of recognition. When the third writ petition was filed in this court challenging the order of the Board, at that point of time the submission was made that steps have been taken for further inspection by the D.L.I.T. In that situation the third writ petition was dismissed by Ansari J. Pursuant to the aforesaid recording the D.L.I.T. has prepared report and that report is challenged in this writ petition.

It appears that the report which is purported to have been prepared relates to the petitioners' school, namely, Panisala Junior High School. The report is sought to be prepared in such a manner and form as if a fresh permission for setting up of the school is necessary. It is mentioned in the report that the school is recommended for recognition as a four class junior high school. Upon perusal of this report it is not clear to me as to how a recommendation could be sent for recognition without mentioning the names of the organising teachers and other staff. This is not permissible.

Therefore, I think that this venture was undertaken in relation to some other purpose. Accordingly, I set aside this impugned report and direct the D.L.I.T. to go once again prepare and submit a report in relation to the recognition of the school as on two earlier occasions this was done. Therefore, inspection report for permission to set up new school is not necessary. A final report shall be prepared by the D.I.L.T. as to whether the school concerned is fit for recognition or not. Accordingly, this report is set aside.

I direct the District Inspector of Schools (S.E.), Dakshin Dinajpur to constitute a fresh District Level Inspection Team for taking into consideration all the aspects as per the Notification dated 26th April, 1978 and this shall be constituted within eight weeks from the date of communication of this order. The District Level Inspection Team is directed to prepare its report and send the same within four weeks to the Director of School Education from the date of completion of inspection. The Director of School Education shall within a period of four weeks from the date of receipt of the report together with the recommendations, if any, send it within six weeks thereof to the Secretary Education Department, Government of West Bengal, who shall do the needful on his part and send the same to the Board within a period of six weeks from the date of receipt of the same. The Board shall, or in the event, constitution of the Executive Committee is not possible within short time, then the President by exercising his power under section 28 of the West Bengal Board of Secondary Education Act shall decide the matter afresh in the objective manner taking into consideration of the earlier report within a period of 12 weeks from the date of receipt from the Secretary, Education Department, Government of West Bengal.

The writ petition is thus disposed of."

3. By the aforesaid order the District Inspector of Schools, Dakshin Dinajpur, was directed to constitute a fresh District Level Inspection Team for taking into consideration all the aspects as per notification dated 26th April, 1978 and the same was to be constituted within 8 weeks from the date of communication of the said order. Further, the District Level Inspection Team was directed to prepare its report and to send the same to the Director of School Education within four weeks from the date of completion of inspection. The Director of School Education was directed to the effect that after receipt of the report he would send his recommendation and the report within a period of four weeks to the Secretary, Education Department, Government of West Bengal and who

should do the needful on his part and would send the same to the Board within a period of six weeks from the date of receipt of the same. The Board was directed that either it shall or in the event constitution of the Executive Committee was not possible, within short time, the President, by exercising his power under Section 28 of the West Bengal Board of Secondary Education Act, 1963, would decide the matter afresh in the objective manner taking into consideration of the earlier report within a period of 12 weeks from the date of receipt from the Secondary Education Department, Government of West Bengal. The said order was considered by the Recognition Committee but they regretted their inability to recommend Panisala Junior High School for recognition and thus, the prayer for recognition was rejected. An application for contempt was filed by the petitioners being W.P.C.R.C. 25304(W) of 2005 and on the contempt application an order was passed on 11th July, 2007. The said order is set out below:

"Having heard the learned Counsels for the parties, I am of the view that decision taken by the Board in terms of my order dated 2nd April, 2003 is not according to the spirit and words of the order. I directed the Board to take into consideration the earlier reports.

In the fresh report, for some reason or other, D.I. did not recommend for recognition. However, in earlier reports there was positive recommendation, but these reports were not considered or taken note of by the Board.

Accordingly, I set aside this decision and direct the Board to take fresh decision, taking note of the earlier reports wherein recommendation has been made and such decision should be placed on or before the next date of hearing.

The matter is otherwise disposed of. However, it will appear eight weeks hence, as marked "To Be Mentioned" for the purpose of receiving compliance report."

4. By the aforesaid order this Court set aside the decision of the Board and directed the Board to take a fresh decision taking note of earlier reports of the District Level Inspection Team wherein recommendation had been made. After the aforesaid order dated 11th July, 2007 was passed, the Secretary, West Bengal Board of Secondary Education, communicated a letter dated 11th October, 2007 and observed that the earlier communication dated 5th August, 2004 rejecting recognition to Panisala Junior High School was cancelled as the same was set aside by the Hon'ble High Court and upheld the earlier decision contained in memo dated 20th June, 2001 which was a recognition letter to the school as a new set up one (proposed). This memo has not been accepted by the petitioner as the school cannot be categorized to be a proposed school or newly set up school because from the very beginning, the school has been functioning as an organizing school and the petitioners are the members of the Organizing Committee who have come before this Court pursuing their relief from time to time praying for recognition of the said school as an organizing one. Therefore, the petitioners are aggrieved by the said order dated 11th October, 2007. By the said order dated 11th October, 2007, they have brought the petitioners back to a

situation prior to 2nd April, 2003 on which date this Hon''ble Court passed an order in W.P.5132(W) of 2001 and the order dated 2nd April, 2003 was passed on a writ petition being W.P.5132(W) of 2001 challenging the memo dated 20th June, 2001 by which the school was granted recognition as a newly set up school. However, the Secretary, West Bengal Board of Secondary Education, again issued a letter being No. 78/C (Law) dated 7th April 2011 on the subject of recognition of Panisala Junior High School, Dakshin Dinajpur and has communicated the order passed by the President, West Bengal Board of Secondary Education wherefrom it appears that the President, West Bengal Board of Secondary Education, in exercise of his powers under Section 28(2) of the West Bengal Board of Secondary Education, 1963 as amended, granted first recognition to Panisala Junior High School as a Four-Class Junior High (V to VIII) with retrospective effect from 1st May, 2001 without any financial assistance taking into account the recommendation of the District Level Inspection Team in the earlier report dated 11th January, 2001 and also stipulating that the terms and conditions of new set up schools will not be applicable here. While passing the said order the President, West Bengal Board of Secondary Education has observed that he has made the disposal in compliance with the Court's order passed on 2nd April, 2003 in W.P. No. 5132(W) of 2001, W.P.C.R.C. No. 25304(W) of 2005 and C.P.A.N. No. 495 of 2004.

5. Mr. Milon Bhattacharya, learned advocate appearing for the petitioner submits that the impugned orders cannot be sustained in law and those are required to be set aside. He further submits that although, the Board, through its President, has granted first recognition to the school in question, but has deprived the school from financial assistance which is absolutely without jurisdiction and beyond the competence of the Board and/or its President who has passed the impugned order. The learned advocate, Mr. Swapan Kumar Pal appearing for the State submits that there is no impunity in the order passed by the Secretary on 7th April, 2001 withholding financial assistance although, first recognition has been granted to the Junior High School. He submits that if such a decision has been taken by the Board not to grant finance, it will be the duty of the petitioner to approach the appropriate Government to grant financial help to the school and unless such approach is made the State is not under any obligation to grant the financial assistance.

6. Having heard the learned advocates for the parties and after perusal of the record and the materials disclosed before me it appears that it has been rightly pointed out by Mr. Bhattacharya that when Government has made arrangement for free education to the children up to the age of 14 years it is not justified for the State authorities to withhold financial assistance to the school concerned. While granting first recognition to the said school and to this effect he has cited the provisions of the Right to Children to Free and Compulsory Education Act, 2009.

7. Section 3 of the aforesaid Act provides for right of child to free and

compulsory education. The said provision is set out below:

"Right of child to free and compulsory education. - (1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in neighbourhood school till completion of elementary education.

(2) For the purpose of sub-section (i), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:

Provided that a child suffering from disability, as defined in clause (I) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996 (1 of 1996), shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act."

8. From a perusal of Section 7 of the said Act it also appears that the Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act. Sub-Section 5 of Section 7 further provides that the State Government shall be responsible to grant funds for implementation of the provisions of the Act subject to other provisions of Section 7. It, therefore, casts a duty upon the State Government to provide free education and to implement the provisions of the said Act of 2009. If the provisions of the said Act are to be implemented by the State Government, there is no scope for the Board of Secondary Education to deny financial assistance to the school while granting recognition. That apart, regarding grant of funds, it is within the absolute domain of the State Government and Board is not the authority either to grant or withhold it. Therefore, in my view, while passing the impugned order dated 7th April, 2011 (Annexure P-8) the Board has not taken a correct view in withholding the financial assistance which is not within its power and authority instead the Board should have placed the matter before the Director of School Education and the Secretary, Education Department with regard to grant of finance to the school subsequent to the first recognition granted by the West Bengal Board of Secondary Education under the aforesaid letter dated 7th April, 2011.

9. Accordingly, the observation in the said Memo dated 7th April, 2011, that the school will not get any financial assistance, cannot be sustained and the said observation is hereby quashed and set aside. But the other portions of the said memo are upheld whereby the Board has granted first recognition to Panisala Junior High School as a Four-Class Junior High (V to VIII) with retrospective effect from 1st May, 2001 as an organizing school. The order contained in letter dated 11th October, 2007 is also set aside being contrary to Court's order dated 2nd April, 2003 and 11th July, 2007. In view of the above I also direct the West Bengal Board of Secondary Education to place the entire matter before the Director of School Education, West Bengal, within a period of four weeks from the date of communication of the order and the matter being so placed the

Director of School Education shall forward his views in the matter of grant of finance within four weeks thereafter to the Secretary, Education Department, who shall take a decision, if not already taken in the meantime, in the matter within eight weeks after receipt of the views from the Director of School Education and he will give an opportunity of hearing to the petitioners with regard to grant of financial assistance to the school in question. The Secretary, Education Department shall also communicate his decision to the petitioners within a period of two weeks from the date of decision to be so taken.

10. The writ petition is disposed of.

11. There will be no order as to costs.

12. Urgent Photostat certified copy of this judgment, if applied for, be delivered to the learned counsel for the parties, upon compliance of all usual formalities.