

(1981) 03 CAL CK 0028
In the Calcutta High Court

In Re. Monoranjan Maity and Others

Date of Decision : 31-03-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Electricity Act, 1910 — Section 6(1), 6(1), 6(1)(a)

Citation : 85 CWN 788

Hon'ble Judges : B.C. Roy, J

Bench : Single Bench

Advocate : Bidyut Kumar Banerjee, B.K. Dutta, Barindra N. Roy, B.B. Das, Tapan Kr. Dutta and N. Patra, for the Appellant; N.N. Gooptu, G.P.A.P. Sarkar, S.B. Bhunia, H.N. Halder, A.L. Basu, A.K. Maity, A.K. Ghosh and Asoke De, for the Respondent

Final Decision : Allowed

Judgement

B.C. Roy, J.—All these writ petitions are directed against the inaction on the part of the District School Board, Midnapore to consider and dispose of the applications made by the organiser teachers and Managing Authority of these schools for grant or recognition u/s 54 of the Bengal (Rural) Primary Education Act, 1930 (Bengal Act VII of 1930) and thereby depriving the legitimate claim of the petitioners who are organiser teachers of the said schools to be considered for appointment by the Board. The facts of these petitions are stated hereinbelow:

The petitioners Manoranjan Maity and Sakti Prosad Sarkhel stated that in 1965 a managing authority was formed by 7 members who organised a school named as "Halderberh Primary School" in village Halderberh, P.S. Chandrokona, District Midnapore for imparting primary education to the children of the said village and the petitioner No. 1 was appointed as Head Teacher and the petitioner No. 2 was appointed as an Assistant Teacher in the said school. An application has been submitted to the respondent No. 3, Sub Inspector of Schools, Chandrakona Circle on 30th October, 1975 by the President, Secretary of the Managing Committee of the school for recognition of the said school by the District School Board. The said application was duly received by the Sub Inspector of Schools, Chandrakona

Circle I. The said application was made in compliance with the form prescribed by Section 54 read with rules framed u/s 66(2)(p) of the Bengal (Rural) Primary Education Act, 1930. It has been stated that the school was visited by the respondent No. 3 twice--once on 20.9.69 and another on 25.1.72 and the respondent No. 3 submitted his reports which was annexed collectively as annexure "C" to the petition. In his reports the respondent No. 3 recommended for recognition of the school as there was no school in the said village. It has been stated further that the petitioners are working in the said school as teachers since the inception of the school and they have got the requisite educational qualification for being appointed as teachers of primary schools recognised by the Board. The President, Ad Hoc Committee of the District School Board, Midnapore had issued a letter to the Savapati, Chandrakona-I Pachayat Samity, Chandrakona-I Block requesting him to arrange for selection of site in the schoolless villages namely Halderberh and Gareria and also for making gift of land in favour of the Board by a registered deed of gift so that new primary schools by the Board may be set up there. It has also been stated that the Ad Hoc Committee, District School Board, Midnapore, the respondent No. 1, also appointed one Sri Nirmal Chandra Hati as an Assistant Teacher to organise a primary school in the Village Halderberh under Chandrakona I Circle. This letter has been annexed as annexure "F" to the petition. The petitioner sent a letter demanding justice to the respondent No. 2 as well as to the President, Ad Hoc Committee, District School Board, the respondent No. 1 requesting them to cancel the aforesaid appointment and to consider their application for recognition of the school organised on private initiative and also to appoint them as primary teachers of the said schools. Thereafter having received no reply this application has been made by the petitioners for a writ of Mandamus commanding the respondents not to remove the petitioners from service and not to appoint respondent Nos. 7 to 9 as teachers of the Halderberh Primary School. There was also a prayer for a writ of or in the nature of Certiorari commanding the respondents to forward the records of this case to this court so that the said letter issued may be quashed and set aside. A prayer for ad interim order of injunction was also made restraining the respondents from removing the petitioners from service as teachers as well as restraining the respondents from appointing the respondents 7 to 9 as teachers of the said aforesaid school till the disposal of the Rule.

2. A Rule was issued and an ad interim order of maintaining status quo was also made for a limited period subsequently the said interim order was extended till the disposal of the Rule with this clarification that status quo so far as the petitioners are concerned will continue.

3. A rejoinder has been filed sworn by one Sri Jatindranath Manna, an Upper Division Assistant in the Office of the District School Board, Midnapore respondent No. 1 on behalf of the respondents 1 and 6. In paragraph 11 (a) of the said rejoinder it has been stated that the old Rule 3 has been substituted by new rules by notification dated 26th October, 1971. Rule 3(D) of the aforesaid

Rule provides that a qualified person serving as an organiser teacher in a primary school, ever since that school was established may be appointed with the prior approval of the Director of Public Instruction, West Bengal, as an Assistant Teacher of the school at the time it is granted recognition. It has also been averred in sub paragraph (b) of the said paragraph that the principle of recognition have been laid down in Government order No. 503 EDN(P)/4(a)/6-71/ET. 11/75 dated 20th April, 1977. It has been stated that by the aforesaid order the system of giving recognition to organised primary school has been discontinued with effect from 1st March, 1977 with this reservation in paragraph 3 of the Government order that the quota of schools which had already been sanctioned up to February 28, 1977 for giving recognition to organised primary schools shall remain effective and organised primary schools will be recognised to fill up that quota. It has also been stated that the said order was further modified by a Government order No. 421-EDN(P)/5B-2/77 dated 27th March, 1978. By this order the order of 1977 was further modified to this extent that organised primary school, which have not yet been recognised need not be recognised in future and the District School Board was vested with the power to set up new schools where required. It has also been stated by Government order No. 301 -EDN(P)/3-P 45/78 dated March 1, 1979 that the District School Board was empowered to establish primary school and to grant recognition to them in rural areas and such schools are to be located in schoolless villages only from out of the list of such villages to be forwarded to the District School Board by the Director of Primary Education, West Bengal. It has also been stated that the aforesaid order was again modified by Government Order No. 1580-EDN(P)/3P 47/79 dated 14th December, 1979. This order did away with the establishment of primary schools from out of the list forwarded by the Director of Primary Education and it empowered the Board to establish new primary schools in rural areas and to grant recognition to them. It has also been stated in the said Government order that the District School Board is the final authority in the matter of selection of sites, setting up of primary schools and their recognition and appointment of teachers therein. It has also stated that on the basis of this Government order the Board has full authority to select sites, for establishment of primary schools and appoint teachers to these schools. Accordingly the Board has not yet recognised the alleged Halderberh Primary School in which the petitioners are alleged to have been working. The Board, it has been stated, has appointed respondent No, 7, 8 and 9 to organise a primary school at Halderberh in consultation with the Panchayat Samity, Chandrakona Block I as referred to in annexure "F" to the writ petition.

4. An affidavit-in-reply on behalf of the petitioners sworn by the petitioner No. 1 has been filed denying those statements and allegations reiterating the statements and allegations made in the writ petition.

5. The petitioners in regard to the petition of Asit Ranjan Bera and others -vs- District School Board, Midnapore are all organiser teachers of primary school situated at village Lochananda Chawk adjacent to West Garbari in the District of

Midnapore. They have filed this writ petition alleging that the Lochananda Chawk primary school was organised in 1968 and the petitioners are working there as organiser teachers since its inception. The respondent No. 3, it has been stated, visited the school from time to time and signed the students attendance register and teachers attendance register. This school, it has been stated, was selected for sanction as a primary school by a resolution dated 29th May, 1975 adopted by the authorities concerned. It has also been stated that some villagers of Paschim Chawk a neighbouring village of the Lochananda Chawk village where the petitioners' school is situated challenged the inaction of the District School Board, Midnapore in not recommending their school, that is, Paschim Chawk Sitala Primary School in C.R. No. 2005 (W) of 1973 and on 5.1.76 the said rule was discharged with the observation that the petitioner could not establish a legal right to have their school considered for recognition in preference to the school of the petitioners". It has also been stated that on 15th March, 1980 a notice was issued by the respondent No. 1, the President, Ad Hoc Committee, District School Board, Midnapore directing the respondent No. 4, Sabhapati, Bhagabanpur II Panchayat Sanity, Bhagabanpur Block-II directing him to make arrangement for selection of site for setting up of a school in schoolless village Paschim Chawk and to arrange for making over of land in favour of the Board by a registered deed of gift for construction of school building. This letter has been annexed as annexure "E" to the petition. This has been challenged in this petition on the ground that the said direction for setting up of new school without giving effect to the previous resolution of the Board selecting the petitioners' school for grant of recognition is wholly illegal. It has also been submitted that this action on the part of the Board is arbitrary and so bad and prayed for a writ of Mandamus directing the respondents to give effect to the resolution of the Board dated 29th May, 1973 and to grant recognition to the school and to appoint petitioners as organiser teachers of the said school. An interim order was prayed restraining the respondents from giving effect to the said order dated 15.3.80 issued by the President, Ad Hoc Committee for setting up new school at Paschim Chawk.

6. A Rule was issued and an interim order was made restraining the respondent from giving effect or further effect to the order impugned.

7. An affidavit-in-opposition sworn by Sri Jatindra Nath Manna, an Upper Division Assistant in the office of the Midnapore District School Board, the respondent No. 8 has been filed. It has been stated in paragraph 8 of the said affidavit that the Board selected only few schools including the school of the petitioners" but the Board could not take any steps for forwarding the names of the school at Lochanananda Chawk, to the Director of Public Instruction for its approval because of the pendency of the above Civil Rule in this Hon"ble Court and after disposal of the Civil Rule the Board also could not take any steps for recognition of the petitioners' school due to non-availability of the quota granted by the Government of West Bengal. It has also been stated in paragraph 9 that no question of petitioners' appointment as teachers of the said school could arise as

the school was not recognised. The representation alleged to have been made on 15th March, 1978 for recognition of the school and the appointment of the petitioners as teachers was of no meaning as the practice of granting recognition of the schools organised on private initiative and appointment of teachers working therein as organiser teachers was abolished by virtue of the above notification.

8. An affidavit-in-reply has been filed on behalf of the petitioner reiterating the statements and allegations made in the petition. It has also been stated in paragraph 13 of the said affidavit-in-reply that the respondent No. 1 has to produce record before this court to show that from 6.1.76 to 28.1.77 or prior to that there was no quota available to them.

9. The other 5 applications, that is in re : Birendra Nath Ojha, in re : Haripada Mondal, in re : Anil Kr. Acharya, in re: Lalit Mohan Sahu and others, the organiser teachers of the schools are the petitioners and their allegations in all these petitions were similar to the extent that the schools in which they were working were organised by the villagers and a committee of management was also constituted. An application was made before the District School Board, Midnapore for grant of recognition to those schools. It appears in regard to the Danaipur Rama Sree Primary School in which Birendra Nath Ojha was the petitioner, a report was submitted in the prescribed form by the Sub Inspector of Schools, Bhowanipur recommending for recognition of the school. In respect of the Guagachia Primary School in village Contai which is the subject matter of the writ petition filed by Haripada Mondal a report was submitted by the Assistant Inspector of Schools, Contai stating that the school has been started in 1967 and it is running smoothly since July, 1969 and he recommended for grant of recognition of this school as it fulfilled all the requirements as specified by Section 54 read with 66 (2) (P). It also appears that a report was submitted by the local M.L.A. who is also a member of the District Primary Advisory Committee recommending for recognition of the school. The Deputy Assistant Inspector of Schools, Contai, Midnapore also submitted a report stating that the school fulfils all the conditions as prescribed by the rules framed u/s 54 of the said Act. In regard to the petition filed by Anil. Kr. Acharya and others an application was made by the Secretary of the Schools to the Director of Public Instruction, Writers Buildings liberty for recognition of this primary school.

10. Mr. Banerjee, learned Advocate appearing on behalf of the petitioners in matter Nos. 2 & 3 has advanced threefold submissions. He firstly contended that Section 54 of the said Act provides that if an application is made for recognition for a school organised on private initiative the District School Board is under an obligation to consider and dispose it of either according recognition or withholding or not according or refusing to accord a recognition. If recognition is refused the Act provides for recording of reason and the Managing Authority of the school has a right under Sub Section 3 of Section 54 of the said Act to prefer an appeal against the said order. This right, it has been submitted, is a statutory

right and it cannot be taken away by the Government orders made in 1977, 1978 and 1979 without framing any rules in the manner provided u/s 66 of the Act. Mr. Banerjee has also submitted that the Government orders cannot frustrate the provisions of the above section by providing that no recognition will be granted to schools organised on private initiative as the same is ultra vires of the Act. It has been next submitted that the Government orders in order to be effective Rules have to be made in accordance with the manner provided for framing Rules u/s 66 of the Act. It has been further submitted that the Government orders cannot be deemed to be rules made u/s 66 (2) (z6) of the said Act merely because the Government has been empowered to frame such Rules as the same have not been made in accordance with the provisions of Section 54 of Bengal General Clauses Act. These orders are nothing but administrative orders and they cannot purport to modify Rule 3 (D) of the Rules framed u/s 66(2) (z6) of the Act which conferred certain rights on the organiser teachers to have their claims to be appointed as teachers in schools organised under private initiative considered as soon as it is recognised. It has been lastly submitted that Section 23 (i) (c) of the said Act confers upon the Board the power to frame schemes for extension of primary education within the jurisdiction of the District Board. Section 23 (h) also provides for the manner of making application for recognition. The Government orders complained of cannot lay down a different manner or mode of recognising schools other than that provided in the Act and the Rules framed thereunder and as such those Government orders are not enforceable being contrary to the provisions of the Rules which have got a statutory force.

11. Mr. Bimal Chandra Dutt, learned Advocate appearing on behalf of the petitioner in Item No. 4 adopted the arguments advanced by Mr. Banerjee.

12. Mr. B.N. Roy, learned Advocate appearing on behalf of the petitioner in re : Manoranjan Maity has submitted in the first place that the ad hoc committee appointed by the Government is not empowered to appoint teachers in primary schools as no such power has been conferred on the ad hoc committee as will be evident from the paragraph 3 of the Government order being No. 301-EDN. (P) dated 1.3.1979. It has been submitted that the power to appoint teachers as well as selection of sites of primary schools are vested in the Board, that is, the District Board.

13. Mr. Majumdar, learned Advocate appearing in Item No. 6 while adopting the argument of Mr. Banerjee on other points made on a two-fold submission. The first dimension of his submission is that the petitioner who is an organiser teacher has locus standi to maintain the writ application inasmuch as the effect of the Government orders prejudicially affected his right to be considered for appointment as an organiser teacher as soon as the school would be granted recognition u/s 54 by the District School Board. It is not necessary that the person aggrieved means only a person whose legal right or proprietary interest granted by a statute is directly affected by the impugned order. A person who is otherwise prejudicially affected by the impugned orders and/or notification is

competent to come before the writ court for redress of his grievances. The second dimension of Mr. Majumdar's submission is that the impugned orders issued by the Government and having the effect of supplanting the rules and not supplementing it are not legally enforceable inasmuch as they are not Rules made u/s 66(2) of the said Act as previous publication as required under the said Act and u/s 24 of the Bengal General Clauses Act has not been observed. These Government orders and/or notifications are mere administrative orders or instructions having no force of law and hence they cannot modify, supplant or substitute the statutory Rules or the statutory provisions. Mr. Majumdar has also further submitted that these orders are bad as they are ultra vires of the Act or, in other words, they are vitiated by substantive ultra vires. Decision in 106 U.S. report 411 Morley -vs- Jhones has been referred in this connection. It has also been submitted by Mr. Majumdar that the vested rights accrued on the basis of the statutory provisions and rules framed thereunder cannot be taken away by the Government orders.

14. Mr. Sadesh Ranjan Bhunia, learned Advocate appearing for the District School Board, Midnapore, one of the respondents in the writ petition, raised a preliminary objection as to the maintainability of this application on the ground that the Managing Authority of this school has not come forward to challenge the impugned Government orders and/or notifications. According to Mr. Bhunia it is the Managing Authority of the organised primary school who can apply for recognition u/s 54 of the said Act. Mr. Bhunia submitted that the Act envisages two classes of primary school (1) Primary School Managed by Government or by the District School Board and on delegation by the Union Board or Panchayat Samity and (2) private schools organised on private initiative which are recognised by the Board u/s 54 of the Act. Mr. Bhunia has also submitted that the organiser teacher working in private school has got no locus standi to maintain a writ application challenging the validity of the Government orders which relate to establishment and maintenance of primary schools including recognition or non-recognition of schools under private management. It has also been submitted that if recognition to a private school is refused by the Board it is only the Managing Authority of the school which alone is competent to prefer an appeal against such an order under sub-section (3) of Section 54 of the said Act. Mr. Bhunia also submitted that in case of grants-in-aid to private schools u/s 55 of the Act the Managing Authority of such school alone can apply for such a grant. It was, therefore, contended that the applications are liable to be rejected on that ground specially in view of the fact that in none of these applications the managing authority have been impleaded as parties.

15. It has also been submitted by Mr. Bhunia, learned Advocate appearing on behalf of the respondent No. 1 District School Board, Midnapore that the Government orders issued on 20th April, 1977, abolishing and/or discontinuing with effect from 1st March, 1977 the system of giving recognition to private schools as well as the Government order issued under G.O. No. 421-EDN(P)/5-B-2/77 dated 27th March, 1978 wherein sub paragraph (a)(1) it has been stated

that organised primary schools set up at private initiative should no longer be granted recognition as already intimated in the G.O. dt. 20th April, 1977 and that the Board will select sites from out of the list furnished by the Deputy Director of Public instruction for setting up new primary schools in schoolless villages and also in villages inhabited by members of the Scheduled Castes and Scheduled Tribes are valid rules modifying the rules for recognition of primary schools organised on private initiative. It has also been submitted by Mr. Bhunia that the Government order No. 301-EDN(P)/3-45/77 dated 1st March, 1979 issued by the Deputy Secretary, sanctioned establishment of 1200 new primary schools in the State, i.e., 1000 schools in the rural areas and 200 in urban areas during the current financial years. It has also been stated in paragraph 3 of the said order that the site/location/village where new primary schools will be set up shall be selected and finally approved by the District School Board in rural areas and by the District Inspector of Schools (P.E.) in consultation of the Urban Officers Committee in urban areas are to be located in schoolless villages only from out of the list of such villages to be forwarded to be Distinct School Board by the Director of Primary Education, West Bengal. Final selection of sites will rest with the Board. It has also been stated that in rural areas the District School Board shall establish primary schools and grant recognition to them. These Government orders it has been submitted on behalf of the respondent No. 1, the District School Board, are, in fact, rules framed by the Provincial Government u/s 66 (2) (P) and 66(2) (26) of the said Act and these Government orders purported to modify the rules for recognition of primary schools and as such it is submitted that there is no longer any scope for organisers of private school to apply for recognition u/s 54 of the said Act. It has also been submitted that the District School Board, Midnapore did not act arbitrarily in not disposing of these applications pending before it for grant of recognition. It has also been submitted by Mr. Bhunia that these Government orders are not required to be published in Gazette as provided in section 66(1) of the said Act because of use of the word "prescribed" as defined in section 2(13) of this Act. It has also been submitted that section 24 of the Bengal General Clauses Act will also have no application. It has been further submitted that if wrong section has been quoted that does not make these Government orders bad. It does not affect the validity of the Government orders but they have to be treated as rules as power is there vested with the Government to frame rules. In support of this submission several decisions have been cited at the bar. It has also been submitted that when Governor has exercised power of framing rules by issuing order the same cannot be declared bad. It has also been submitted that the word "may" as used in section 66(1) is not mandatory but directory and as such the Government orders mentioned above though not published previously it does not detract from their validity of being treated as rules. It has also been stated that even though the Government orders were not made in accordance with the procedure laid down in section 66(1) of the Act yet the power to frame rules includes within its ambit implied power to amend rules by making orders. Therefore this Government orders are to be treated as rules made by the Government amending the rules

framed u/s 66(2) (P) and 66(2) (z6) of the Act. It has also been submitted that the organiser teachers who are the applicants in all these applications have not acquired any right which has been infringed or threatened to be infringed by the non-accordial of recognition of the schools organised on private initiative. It has further been submitted that these applications in this jurisdiction are not maintainable at their instance. It has also been submitted that rule 3(D) framed by the Government framed u/s 66(2) (P) of the Act is de hors and contrary to the provisions of Section 54 and 55 of the Act and as such they are bad being substantive ultra vires.

It has been submitted that the appointment letters issued which are annexed as annexures "E" & "F" to the petitions are not intended to be appointment of teachers to the private schools and as such, such appointment do not in any way affect the rights or interests of the petitioners who are teachers in private schools not yet recognised. It has also been submitted that the purported orders promote the interest of the people and as such they should be held to be valid.

16. Mr. Gupta, learned Government Pleader, appearing for respondents Nos. 2 to 5 in petitions Nos. 1, 2, 4 & 5 has submitted that these petitions have not made by the Managing Authority of the school as required u/s 54 of the Act and these applications for recognition are not in accordance with the requirements prescribed by the rules framed u/s 66 (2)(z6) of the Act. As such these petitions are not maintainable in this jurisdiction. It has also been submitted that the organiser teachers have got no legal right which has been infringed or has been affected by non-consideration of the application for grant of recognition. Their right will accrue only when recognition is granted to their schools organised on private initiative. There is, therefore, no prejudice caused to these petitioners nor there is any violation of any legal or fundamental rights of the petitioners. These applications are therefore premature as there is no cause of action for the same. It has also been submitted that the applications for recognition have not been considered and rejected as yet and as such the writ applications are premature as petitioners who are organiser teachers are not aggrieved persons. It has also been submitted that the prayers as they are couched are not in proper form and as such no relief should be granted. It has been further submitted that these applications for recognition were not properly addressed as required u/s 54 of the Act and the rules framed thereunder and as such they are liable to be rejected. It has also been submitted that rule 3 (D) has been substituted by notification dated 11th September, 1980 published in Calcutta Gazette. This substituted rule 3 (D) has completely taken away the right conferred by the old rule 3 (D) on the organiser teachers to have their cases considered for appointment as teachers in primary schools recognised by the Board.

17. Mr. Sarkar, learned Advocate appearing on behalf of the State respondents has submitted that applications for recognition are to be filed in the prescribed form, that is, form prescribed by rules made u/s 66 (2) (z6) and only those applications which were made in prescribed form are required to be considered

by the District School Board u/s 54 of the Act. The applications had not been made in the prescribed form by the Managing Authority of the organised schools under private management and as such they are not required to be considered by the Board. It has also been submitted that the question of appointment of organiser teachers will arise only after recognition has been given. Before recognition is granted rule 3(D) of the rules framed u/s 66(2)(P) does not come into play and the organiser teachers, that is, the petitioners cannot claim to have any right to be considered for appointment. Therefore, these applications by the organiser teachers are not maintainable. It has also been submitted that there is no conflict of rights by appointment of respondents in the public managed school nor such appointment leads to any civil or evil consequences. As such the petitioners being not the aggrieved are not competent to maintain these writ petitions. It has also been submitted that Section 23(i)(c)(d)& (e) refers to schools under public management. As such rules framed u/s 66(i) and 66(2) (P) describing conditions of appointment of teachers in primary schools are applicable only to schools under public management and not to privately organised schools. So the Government orders are valid inasmuch as they purport to deal with schools to be set up under public management. It has also been submitted that Section 23 confers upon the Board to prepare schemes for extension of primary education and also to arrange for opening of primary schools which includes the power of the Board to establish new primary schools and the various Government orders issued in 1977, 1978 and 1979 empowering the Board to establish primary schools are valid and the same are enforceable. It has also been submitted that the application which is made as annexure "D" to the Manoranjan Maity's petition is not an application made to the proper authority but to the Inspector of Schools and as such it is not proper application which is required to be considered by the Board. It has also been submitted that in Birendra Nath Ojha's case no application was made by the Managing Authority before the Board for recognition and the application was not in form and was not made to the Board as such the same cannot be considered.

18. Before considering the merits of the submissions advanced on behalf of the parties it is necessary to consider the relevant provisions of Bengal (Rural) Primary Education Act, 1930 (Bengal Act VIII of 1930). Section 2 sub-section (2) defines "Board" as a District School Board constituted under the Bengal (Rural) Primary Education Act, 1930 (Bengal Act VIII of 1930). Section 2(ii) defines "notification" as notification published in the official gazette. Section 2(13) says that prescribed means by rules made under this Act. Section 2 (15) provides that primary school means a school or department of a school giving instruction in primary "education either managed by the Board or recognised as a primary school u/s 54. Section 2(16) provides that "public management" in relation to a primary school means management by the Government or by a District, School Board either directly or through its power of delegation to a Union Board, Union Committee or a Panchayat, all other management shall be deemed to be "private management". Section 6 in Chapter III of the said Act says that on the coming

into force of this Act the provincial government shall established for such District, a District School Board and the manner of composition of members of the District School Board has been specified in different sub-clauses of Section 6. Section 14 of the said Act specifically provides that every Board shall be a body corporate by the name of "District School Board" (name of District), shall have a perpetual succession and a common seal and shall by the said name sue or be sued etc. Section 23 of the said Act specifies the duties to be performed by the Board. Sub-section (c), (d) & (e) refers to the power of the Board to prepare schemes in the prescribed manner for extension of primary education within the area under the authority of each Union Board, Union Committee or Panchayat and to arrange in prescribed manner for the opening of additional primary schools and the extension of existing primary schools in order to give effect as funds permit to such schemes. It is also the duty of the Board to maintain all primary schools under public management in the district except primary schools maintained by the Union Boards under the control of the Board. Section 66(i) of the said Act empowers the provincial Government to make rules for carrying out the purpose of the Act after previous publication and sub-section (2) of the said Section further provides that such rules may provides for all or any of the matters specified in various clauses (a) to (z10) of the said Sub-section. The provincial Government has framed rules under Clauses (n) & (o) of Sub-section (2) of Section 6 providing the manner of preparing schemes for extension of primary education under clause (c) of sub section (i) of section 23 and the manner of opening primary schools and of the extension of existing primary schools as referred to in Clause (d) of sub-section (i) of Section 23. Rules 1, 2, 4, 5 and 7 of the said rules are relevant for our purpose. Rule 1 provides that District Board shall make a survey of the location and standard of the existing primary schools and shall frame scheme of suitably located and properly distributed primary schools within the area under the authority of each Union Board, Union Committee or Panchayat based upon such survey. It has also been provided in the said rule that a preliminary survey should be carried out by the local educational inspecting officers and such officers shall be members of any regional committee which may be set up by the board for the purpose of reporting for the information of the Board, upon such preliminary survey. It has also been enjoined in rule 2 that in preparing such schemes for extension of primary education under rule (1) the Board shall see that the primary schools maintained by it are distributed in such a way that, each primary school may serve an area of 3.14 miles (a circle of 1 mile radius) or population of 2000 persons. Rule 4 has also enjoined that the Board may take into consideration the primary schools maintained by the Union Board under the control of the Board or those under private management recognised u/s 54 of the Act in preparing or giving effect to a scheme for extension of primary education under clause (c) or clause (d) of sub-section (i) of section 23 of the Act. Rule 5 further says that every proposal relating to the distribution, establishment, transfer or abolition of the primary school by Board shall have the opinion of the District Inspector of Schools recorded, thereon in writing before it is finally adopted by the Board. Rule 7 says

that every scheme prepared by the Board under the above rules shall be approved by the provincial Government before it is given effect to. Any subsequent modification of an approved scheme shall also require sanction of the Government. Section 23 sub-section (i) Clause (g) empowers the Board subject to prescribed conditions to fix and pay the salaries of teachers in primary schools. Clause (h) of sub-section (i) of section 23 empowers the Board to grant recognition to schools in accordance with the provisions of section 54 or to withdraw recognition therefrom. Clause (k) of sub-section (i) of section 23 empowers the Board or vests the Board with power to make grants to primary schools under private management. Chapter IX of the said Act deals with the grant of recognition to primary schools under private management and also to sanction grants to the recognised primary schools. Section 54 which is relevant for our purpose is as follows :

54. (1) If the managing authority of any school desires that such school shall be recognised as a primary school under this Act, it shall submit an application in the prescribed form to the Board,

(2) The Board may, subject to the prescribed conditions, by an order in writing, grant such application, conditionally or unconditionally or refuse or defer the grant of recognition and may also similarly withdraw recognition so granted.

Section 55 empowers the District School Board to sanction grants-in-aids to primary schools under private management in the prescribed manner. Rule 67(2) (z7) framed by the Government prescribes the manner of making application and the conditions of grants-in-aid to primary schools under private management. Rule 6 of the said rules specifically provides that the Board shall not give a grant to a school which is not recognised by the Board. Rules framed u/s 66(2)(z6) lay down the form of application for and the conditions of grant of and Withdrawal of recognition to a primary school u/s 54. Rule 1 provides that the application to the Board for recognition as a primary school shall be in writing and this application shall give information regarding the name of the school, location of the school, description of the school building and grounds, number of pupils in each class of the school, names and qualifications and pay of the school staff etc. It has also been provided in rule 2 that as soon as application is received the Board shall cause the school to be inspected by an Inspecting Officer of the Department of Public Instruction and after considering this report shall either recognise the school or shall refuse recognition. It has also been provided in rule 4 that before a school is recognised though no application for such recognition as primary school has been made by the Managing Authority of the school the Board shall cause the school to be inspected by an Inspecting officer of the Director of Public Instruction and shall follow the same procedure as if an application for recognition has been made. Section 24 of the said Act runs as follows:

Every Board shall in each financial year--

(i) frame and transmit to the Director of Public Instruction, by such date and in such form as he may direct, a statement showing for its district--

(a) the names of primary schools under private management for which grants have been sanctioned for that year;

(b) the amount of the grant which has been sanctioned for each such school;

(ii) furnish a report to the Director of Public Instruction by such date and in such form as he may direct exhibiting the grants which it has distributed to schools within the district.

19. The first submission is that these writ applications at the instance of the organiser teachers are not maintainable in law in as much as these organiser teachers are not aggrieved persons as none of their statutory rights or fundamental rights have been infringed by the impugned order contained in annexure "F" to the petition of Manoranjan Maity appointing some persons as Assistant Teachers for organising primary schools under the management of the Board as well as annexure "E" to the petition of Asit Ranjan Bera, annexure "F" to the petition of Birendra Nath Ojha appointing teachers to organise primary school at Sibrampur village under the management of the Board, annexure "M" to the petition of Haripada Mondal appointing Teacher to organise primary school at Guagachia under Contai North Circle, Annexure "F" to the petition of Anil Kumar Acharya and others appointing some persons as teachers by the Board to organise primary school in village Benudia, under the Bhagabanpur Circle-I, in the district of Midnapore. It has been submitted further that u/s 54 of the said Act it is only the Managing Authority of the school organised under private initiative to apply before the District School Board for grant of recognition to the school as primary school under the Board. The organiser teacher has got to locus standi to make the instant application before this court inasmuch as refusal or non-refusal of recognition and or non consideration of the application for recognition made before the Board by the Managing Authority does not in any way impinge upon or adversely affect their rights nor in any way they are prejudiced. It has also been submitted that rule 3(D) of the Rules framed u/s 66(2) (p) of the said Act which enjoins that a qualified person serving as organiser teacher in a primary school ever since such school was established may be appointed with the prior approval of the Director of Public Instruction, West Bengal as an assistant teacher of the school at the time it is granted recognition can only be taken into consideration or in other words the right to have the claim of the organiser teacher to be considered for being appointed as an assistant teacher of the school where he is working will arise only when such school is accorded and/or granted recognition by the Board. Before such recognition is accorded and in case such recognition is refused the organiser teacher cannot have the benefit of rule 3(D). Therefore it has been submitted that since in all these cases no recognition has been granted to these schools u/s 54 of the said Act these applications at the instance of the organiser teachers are not maintainable and they are premature. In support of this submission a

decision by a division bench of this court in F.M.A. No. 149 of 1974 (Sudhir Chandra Chakraborty -vs- West Bengal Board of Secondary Education) decided on 19th August, 1974 by Sankar Prosad Mitra, C.J. and Salil Kumar Roychowdhury, J. was cited. This argument has, however, been tried to be repelled on behalf of the learned advocate for the petitioners who submitted that the organiser teachers are aggrieved persons inasmuch as by not disposing of the applications for grant of recognition pending before the Board their right to be considered for appointment in the schools where they were working as primary teachers on the basis of rule 3(D) of the rules framed u/s 66(2) (p) of the said Act had been affected and or prejudiced. It has been submitted on their behalf that unless the applications are disposed of their claim to be considered or, in other words, the benefit conferred by the said rule cannot be availed of by them. Therefore according to them their right to be considered for appointment in the schools for which applications for recognition are pending before the Board has been prejudicially affected for non-consideration of those applications though it is obligatory upon the Board in view of the provisions of the section 54 of the Act and the rules framed thereunder to consider those applications for recognition. These petitions, filed by these organiser teachers, it has been submitted, are therefore maintainable in this jurisdiction.

20. It is undoubtedly the settled position of law that to maintain a writ application the petitioner must be a person aggrieved, that is, he must be affected by the impugned action or inaction on the part of the Statutory authority to discharge its public duties enjoined upon it by the statute to perform.

21. In order to decide this preliminary objection raised on behalf of the respondents it is necessary to consider the question who is competent to make an application for issuance of writ in the nature of mandamus or certiorari or other appropriate writs or order under Article 226 of the Constitution of India. The Supreme Court has observed on a consideration of the provisions of Article 226 of the Constitution as follows:

The language of Article 226 shows that the issuing of writs or directions by court is founded only on its decision that a right of the aggrieved party under part III of the Constitution (fundamental rights) has been infringed. It can also issue rights or give similar directions for any other purpose. The concluding words of Art. 226 of the Constitution have to be read in the context of what precedes the same. Therefore the existence of the right is foundation of the exercise of jurisdiction of the court under this Article.

This observation has been made by Kanaia, C.J. who spoke for the Supreme Court in the case of The State of Orissa Vs. Madan Gopal Rungta, at page 13 Paragraph 5. In the Case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, it has been held that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches to the court for relief. While considering the locus standi of the petitioner to maintain an application in the writ jurisdiction

the Supreme Court following its earlier decisions as stated hereinbefore has observed in the case of *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, at page 1047 (1962) supplement 3 SCR 1 at 6 that Article 226 confers a very wide power on it the High Court to issue directions and writs in the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming the fundamental right can also approach the court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extra ordinary jurisdiction that the relief asked for must be one to enforce a legal right. The right that can be enforced under Art. 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like Habeas Corpus or Que Warranto this rule may have to be relaxed or modified. "Following this decision in the case *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, it has been held" that "ordinarily" the petitioner who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subject matter of the petition. A personal right need not be in respect of a proprietary interest it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission by an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject matter thereof. It has been held that the appellant who represented the village in all its dealings with the Block Development Committee and the Panchayat Committee in the matter of location of the primary Health Centre at Dharmajig under is competent to maintain an application under Article 226 of the Constitution as he had been prejudiced by the impugned order refusing to establish Health Centre in the said village. Similar view has been expressed by Ramaswamy, J. speaking for the Supreme Court in the case of *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, at page 337. "A writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The Chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdiction." The Supreme Court in a latter decision in *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, has further observed that a party claiming to be aggrieved by the action of a body or authority on the plea that the action is unlawful high-handed arbitrary or unjust is entitled to a hearing of the petition on the merits. In *Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd.*, where the petitioner challenged under Article 226 the grant of mining lease on the ground of a direct infringement of his right to be granted a mining lease over an area for which the respondent was given a lease along with other area and it was found that as no such right of the petitioner was affected, he has no locus

standi to file the writ petition. He is neither a party nor a person aggrieved or affected and consequently his writ petition in the High Court is not maintainable.

22. Relying on these decisions a Division Bench of this Court observed in the case of Sudhir Chandra Chakraborty -vs- West Bengal Board of Secondary Education that the petitioner must establish that there is a statutory duty and the petitioner has a statutory right. It has also been held that it cannot enforce an alleged legal right which is disputed and court cannot interfere by a writ of Mandamus in such cases. It has also been held that the appellant did not come under any of the categories of persons aggrieved or a person whose right had been prejudiced within the enlarged scope of such persons laid down by the authority cited. It has been further stated if a person alleges violation of natural justice he must first establish that he has a right to claim natural justice. In this case the teachers challenged certain orders passed by the statutory authority reinstating the respondent Nos. 5 and 6 of the posts of Head Master and Assistant Head Master who were alleged to have been compelled to resign from the post of Head Master and Assistant Head Master by the members of the Managing Committee. In that connection it was held that the appellants who were unapproved teachers have no locus standi to challenge the said order. "When the application under Article 226 of the Constitution is made by a party or by a person aggrieved the court will intervene ex debito justice to the applicant, and when it is made by a stranger the court considers whether the public interest demands its intervention. In either case it is a matter which rests ultimately in the discretion of the Court." This observation was made relying on the decision rendered in Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd., . From these observations it is therefore clear that in order to be an aggrieved person for the purpose of being competent to maintain an application in writ jurisdiction not only the statutory or fundamental rights of the persons concerned be infringed or encroached upon but it also includes a person who has been aggrieved by the impugned action or inaction on the part of the statutory authority enjoined to discharge certain public duties. This decision has been relied upon in Mani Subrat Jain and Others Vs. State of Haryana and Others, where it has been held by A.N. Ray, C.J. speaking for the Supreme Court that it is elementary though it is to be restated that no one can ask for a Mandamus without a legal right. There must be a judicially enforceable right as a legally protected right before one suffering a legal grievance can ask for a Mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. The words "aggrieved person" for the purpose of maintaining an application in writ jurisdiction has been very clearly and lucidly decided in the case of Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, at page 581 para 12. It has been observed that the expression aggrieved person denotes an elastic, and, to an extent an elusive concept. It can not be confined within the bounds of a rigid exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning

depends on diverse-variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioners' interest, and the nature and extent of the prejudice or injury suffered by him. "It has further been observed that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226 an applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, though in the case of some of the writs like Habeas Corpus or Quo warranto this rule is relaxed or modified. In other words, as a general rule infringement of some legal right or prejudiced to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter. The expression "ordinarily" indicates that this is not a cast iron rule. It is flexible enough to take in those cases. Where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject matter of the proceedings will be covered by this rule. This decision was rendered by Sarkaria, J. who spoke for the Supreme Court in this case. In the case of Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, at page 2099 paragraph 30 the meaning of the word "person aggrieved" has been held to vary according to the context of the statute. One of the meaning is that person is held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates' Act is comparable to the role of a guardian in professional ethics. The words "person aggrieved" in Section 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. "It was therefore held that the Bar Council is a "person aggrieved". This judgment was delivered by a Bench of 7 judges. Therefore on a conspectus of all these decisions cited hereinbefore in order to maintain an application for a writ in the nature of Mandamus or in the nature of Certiorari etc. or for any other appropriate order or directions under Article 226 of the constitution, It is not the sole test to be satisfied that the person making the application must show that any of his individual or personal rights either conferred by Part III of the constitution or by any statute has been infringed illegally by the purported action or inaction on the part of the statutory authority. If a person is shown to have a genuine grievance by an action or inaction on the part of the authority to discharge his public duties enjoined upon him by the Act, in that case such person will be an aggrieved person having locus

standi to maintain an application for a writ in the nature of Mandamus and/or certiorary against the purported action or inaction on the part of such public authority.

23. In the instant case all the petitioners except petitioner No. 1 in the case Manoranjan Maity who is not only the Head Teacher but also a member of the Managing Authority of the school are undoubtedly organiser teachers of these private schools. Section 54 of the Primary Education Act clearly enjoins upon the Board to consider and dispose of the application for recognition made by the Managing Authority of any private school. It has also enjoined that the Board has to pass an order in writing either granting recognition conditionally or unconditionally or refusing grant of recognition. There is an appeal provided for in sub-section (3) of Section 54 in respect of any order passed by the Board to the Director of Public Instruction or to any officer subordinate to him above the rank of District Inspector of Schools to whom the Director has delegated his power in this behalf. Rule 3 (D) of the Rules which have been framed u/s 66 (2) (p) of the said Act by the provincial government as amended by notification No. 975 EDN(P) 10-R-1/71 dt. 26th October, 1971 has clearly provided that a qualified person serving as organiser teacher in a primary school ever-since that school was established may be appointed with the approval of the Director of Public Instruction, West Bengal as an Assistant Teacher of the school at the time it is granted recognition. Therefore, this rule confers a right on the organiser teachers to have their claims for being appointed as Assistant Teachers of the schools to be considered as soon as recognition is granted to the schools wherein they are working. In all these cases undoubtedly the applications were accepted by the Board and these schools were inspected by the officers of the District Inspector of Schools, Primary Education, who recommended for grant of recognition to these schools as all these schools are situated in schoolless villages. These applications though made long before, that is, some in 1965, some in 1971 and some in 1975 upto now these applications have not been considered by the Board and no decision has been made either according approval or refusing to accord approval to these schools. These applications for recognition have been kept pending for all these years and in the mean time as evident from the annexures "E" & "F" etc. to these petitions that orders have been made for appointing teachers to organise primary schools in the said villages where these private schools have been organised and in one case in a neighbouring village. Therefore, the setting up of schools under the management of the District School Board, Midnapore, in those villages and appointment of teachers thereunder will undoubtedly prejudice the rights of the petitioners to be considered for appointment as provided in Rule 3 (D) of the Rules and the petitioners have therefore genuine grievance against the inaction on the part of the statutory authority to dispose of the applications for grant of recognition. There is no iota of doubt that unless and until those applications for recognition are considered and disposed of the benefit conferred by Rule 3 (D) cannot be availed of by the petitioners. In these circumstances, in my opinion, these

applications cannot be held to be not maintainable on the plea that any of the personal or individual right of the petitioner has been infringed or affected by the impugned action or inaction of the statutory authority. On the other hand from the test of aggrieved person or, in other words, the definition of aggrieved person as laid down in the decisions in Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, it is clear and apparent that the petitioners are aggrieved persons as they have got a genuine grievances because of the inaction on the part of the respondents not to dispose of the application for recognition. The decision cited at the Bar in F.M.A. 149 of 1974 Sudhir Kumar Chakraborty vs. West Bengal Board of Secondary Education does not support the case of the respondents as the facts of that case are different from the facts of this case. This contention, therefore, is wholly devoid of merit and so it is rejected. These applications, therefore, are maintainable in this writ jurisdiction.

24. The second submission about the maintainability of the writ application on the ground that the District School Board which is a body corporate has not been impleaded in these writ applications is also not tenable on the ground that the District School Board has been impleaded as party respondent in re : Manoranjan Maity's petition, in re : Asit Ranjan Bera's petition, in re: Lalit Mohan Sahu's petition and also in re : Panchanan Maity's petition. In re : Birendra Nath Ojha's petition an application for amendment of the writ application was filed in court on 18th of March, 1981. It has been prayed in that petition that the District School Board, Midnapore be permitted to be added as respondent No. 9. An objection has been taken on behalf of the District School Board as well as on behalf of the State respondent that this amendment should not be allowed at this late stage when the argument of the respondents have been concluded and only the reply on behalf of the petitioners is to be given. This objection, in my opinion, cannot be sustained on the ground that the amendment asked for is a mere formal amendment and such amendment does not create any prejudice to the respondents as the District School Board, Midnapore has already appeared in all these applications and extensively argued its case. Therefore, for the ends of justice and for completely and effectively adjudicating the rights of the parties the application for amendment is allowed as the proposed amendment is a formal one. In view of the above findings this submission is without any substance and hence rejected.

25. It has been next tried to be contended strenuously by Mr. Gupta appearing on behalf of the State respondents in some of these matters and Mr. A.P. Sarkar on behalf of the State respondents in other matters as well as by Mr. Bhunia appearing on behalf of the Midnapore District School Board that the applications for recognition which were made for recognition of the schools u/s 54 of the Act are not applications in accordance with the provisions of Section 54 of the Act as the same was not made by the Managing Authority and not in the form prescribed by Rule framed u/s 66(2)(z6) by the Government. These applications are not required to be considered by the District School Board, Midnapore. It has also been submitted in this connection that these applications were also not

addressed to the District School Board, Midnapore and on that ground also these applications are not necessary to be considered by the Board. This submission of the learned Advocate undoubtedly has got some force but on a close scrutiny of the applications for recognition this submission cannot be sustained. In re : Manoranjan Maity's case the application for recognition was made by the President, Seretary, as well as a member of the Managing Authority of Halderberh Primary School on 29.10.76 and the same was received by the Sub Inspector of Schools, Chandracona circle I. It also appears that application was made in the prescribed form giving all the particulars required. It also appears that the sub inspector of schools, Chandracona Circle I inspected the School on two occasions, i.e., on 20.9.67 and on 25.1.72 and recommended for recognition of this school as it was situated in a backward and schoolless village as evident from his report annexure "C". In re : Asit Ranjan Bera's case a primary school in village Lochanananda Chawk adjacent to Gareria was set up on private initiative sometime in 1968 and in paragraph 5 it has been specifically stated that the said school was sanctioned by a resolution of the District school Board, Midnapore adopted at its meeting dated 29th May, 1973. It has also stated that some villagers of Paschim Chawk who organised a primary school subsequently challenged the sanction accorded by the authorities concerned to this school. This application, however, ultimately became unsuccessful. In paragraph 8 of the affidavit-in-opposition sworn by one Sri Jatindra Nath Manna, an Upper Division Assistant in the Office of the District School Board, Midnapore on 7th June, 1980 admitted that the District School Board, Midnapore selected a few schools including this school but they could not take any steps for approval of the school due to non-availability of the quota granted by the Government of West Bengal. So the question of not making an application in the prescribed form in respect of this school does not, at all, arise. In re : Birendra Nath Ojha's case it has been stated that Danaipur Rama Sree Primary School has been organised in 1970 in village Danaipur within Bhagabanpur Circle I. It has also been stated that the petitioner No. 1 being empowered and authorised by the committee of management of the school applied to the respondent No. 4 for recognition of the school. The respondent No. 5, Sub-Inspector of Schools, Bhagabanpur Circle I inspected the said school and submitted report to the effect that the school was situated in a schoolless village and recommended for recognition of the said school. This report was annexed as annexure "C" to the petition. From this report it appears that all the particulars that are required to be considered at the time of considering the application for recognition as prescribed by the aforesaid rule has been stated similarly in re: Haripada Mondal's case the application for recognition was made by the Secretary of the Managing Authority of Guagachia Primary School which started functioning in July, 1969. In the said application all the particulars prescribed by the Rules have been stated. It also appears that the Deputy Assistant Inspector of Schools, Contai (E) inspected the school and submitted a report on 12th April, 1970 recommending for recognition of the school. In re : Anil Kumar Acharya's case the primary school known as Uttar Benudia Harizanpalli Prathamik Vidyalaya which was organised on 5th March,

1971 started functioning since that date and an application for grant of recognition was made to the Director of Public Instruction by the Secretary of the Managing Authority of the said schools. It also appears that the Sub Inspector of Schools, Bhagabanpur Circle inspected the said school and submitted his report on 27th October, 1976. In the case of Panchanan Maity an application for recognition was made in the prescribed form by the President, Secretary, as well as by the petitioner No. 1 on behalf of the Managing Authority of the said school for recognition. Therefore in all these cases except the case of Asit Ranjan Bera the applications were made in some cases by the Managing Authority and in some cases by organiser teachers. But in all these cases the schools were inspected by the officers of the office of the District Inspector of Schools and they recommended for the grant of recognition to the schools. Moreover, all the requisite particulars as specified in the Rule framed u/s 66(2)(z6) of the Act had also been mentioned. This being the position it cannot be urged at this stage after the applications were accepted and the same were got inspected by the officers of the office of the District Inspector of Schools, Midnapore that these applications are not maintainable and hence not required to be considered as they were not in accordance with the provisions of the section 54 read with said Rule. Moreover, Sub-section (4) of Section 54 also empowers the Board to recognise any school in the district as a primary school though no formal application for recognition has been made by the Managing Authority of the school under sub-section 1. Considering these clauses along with, other clauses of Section 54 Sub-section (2) of the said Act it is difficult to hold that the applications for recognition must be made to the District Board and the same must be in the prescribed form, otherwise the said application is liable to be rejected. On the other hand, it is the intention of the legislature as expressed in the said section that applications made for recognition should be considered even though there is a substantial compliance with the provisions of the said Act and rules framed thereunder. In all these cases except the case of Asit Ranjan Bera where the school concerned has already been selected for recognition the applications were received by the Board and the same were enquired into by the officers of the District Inspector of Schools for the purpose of consideration for grant of recognition. It is neither proper nor just to hold that these applications were not considered by the Board because they are not in proper form and not made in accordance with the provisions of the Act. Assuming for argument's sake that this submission is correct even then the Board has to make a determination rejecting those applications on that ground in writing and the Board cannot keep those applications pending in view of the statutory provision for appeal provided in Sub-section (3) of the said Section. Therefore, in my opinion, this contention is not sustainable at all and these applications are, in my opinion, maintainable.

26. The next question requires to be considered is whether the Govt. orders No. 503-EDN(P)/4A-6/71 BT 11/75 dt. 20th April, 1977, G.O. No. 421-EDN(F)/5B-2/77 dt. 27th March 1978, G.O. No. 301-EDN (P)/3B-45/78 dt. 18th

March, 1979 and G.O. No. 1580-EDN(P)/3B-47/79 dt. 14th December, 1979 which purport to abolish the system of giving recognition to schools organised under private initiative according to the provisions of Section 54 of the Act and empowers the District School Board to establish and organise new schools in schoolless villages can be treated as valid orders made by the Government under the provisions of Section 23 Sub-section 1 Clauses (C) & (D) and whether these orders can be treated as rules framed by the Government u/s 66(2) Clauses (n) and (o) of the Act amending and/or repealing the rules framed under the Act u/s 66(2)(p) as amended by notification dated 26th October, 1971 repealing the rule 3(D) which conferred a right on qualified persons serving as organiser teachers in primary schools under private management to be considered for appointment as an Assistant Teacher of the school at the time the school is granted recognition. The Government order dated 20th April, 1977 undoubtedly in paragraph 2 has specifically stated that "in supersession of all previous orders in this regard that the system of giving recognition to all organised primary schools both in urban and rural areas of the state shall be discontinued with effect from 1st March, 1977." This order and also the subsequent orders clearly abolishes the system of giving recognition to primary schools organised on private initiative. The Government has been given power to frame rules u/s 66 of the Act for carrying out the purposes of the Act. These Government orders which purport to stultify and frustrate the provisions of section 54 of the Bengal (Rural) Primary Education Act, 1930 can not be said to be valid orders. Even if it is assumed that these orders were made by the provincial Government pursuant to the power vested in it u/s 66 of the said Act these orders are invalid and unenforceable as they purport to render ineffective the provisions of section 54 and 55 of the Act. These orders cannot also be treated as orders made u/s 23 of the said Act read with section 66(2), (n) and (o) of the Act for two reasons : Firstly those order empowered the District school Board to set up new primary schools in schoolless villages within the District contrary to the provisions of section 54 of the Act. It has been tried to be contended that these orders have been made in order to give effect to the scheme for extention of primary education as provided in section 23 (1) (c) and (d) of the said Act. This argument cannot hold good because section 23 sub-section (1) clauses (c) and (d) imposed a duty on the District School Board to prepare in prescribed manner a scheme for extension of primary education within its jurisdiction and Clause (d) of the said Section also vest the School Board with power to arrange in prescribed manner for opening of additional primary schools and the expansion of existing primary schools in order to give effect to such schemes. Rules have been framed by the Government under Clauses (n) and (o) of Sub-section (2) of Section 66 providing the manner of preparation of schemes for extension of primary education and also for the manner of opening of additional primary schools. Rules 1 to 7 of these rules clearly lay down the manner of preparing the schemes and the rule 4 specifically says that the District School Board while preparing such scheme may take into consideration the schools under private management recognised u/s 54 of the Act and this scheme containing proposal for establishment of primary schools by

the Board must have the opinion of the District Inspector of Schools in writing before it is finally adopted by the Board. The scheme has also to be approved by the provincial government before it is given effect to. These government orders which purport to empower the District School Board to establish new schools in schoolless villages does not refer to any such scheme prepared by the Board and approved by the provincial government. Therefore, in my opinion, these government orders being not in accordance with the provisions of Section 23 of the Act and the rules framed u/s 66 of the said Act are not enforceable and they are invalid inasmuch as they are contrary to the provisions of Section 23 of the Act as well as the rules framed u/s 66 of the said Act. Secondly these orders cannot be treated as rules framed u/s 66 of the said Act on the ground that these rules were not made in the manner provided in Section 66 (1) of the said Act. It is pertinent to refer to a passage in Craise on Statute Law, 7th Edition page 317, paragraph 14 : "Statutory rules should not take effect unless they have been published as directed by the statute which authorises them". In Gujarat Electricity Board Vs. Girdharlal Motilal and Another, Section 6 (1)(a) of the Indian Electricity Act, 1910 clearly provides that in the case of a licence granted to a private body before the commencement of the Indian Electricity (Amendment) Act, 1959 on the expiry of period specified in the licence the State Electricity Board shall have the option of purchasing the undertaking and such option shall be exercised by the State Electricity Board serving upon the licensee a notice in writing of not less than one year requiring the licensee to sell the undertaking to it at the expiry of the relevant period mentioned therein. It was held that as the notice issued by the State Electricity Board does not require the licensee to sell the undertaking but merely mentions that the Board decided to exercise the option of purchasing the respondent undertaking is not a proper and valid notice as the same was not issued directly in accordance with the provisions of Section 6 (1) of the Indian Electricity Act which is a condition precedent to the exercise of the power conferred on the State Electricity Board to purchase the undertaking. It was held that the mandatory provision of Section 6(1) being not observed the notice was invalid. Statutory power has to be exercised in the manner prescribed for exercise of that power and in no other manner. In the case of Ramchandra Keshav Adke vs. Govind Joti Chavare it has been observed by the Supreme Court that:

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other way.

Section 66(1) of the Act provides specifically that the provincial government may after previous publication make rules for carrying out the purposes of this Act. It has been tried to be contended on behalf of the respondents that non publication of the Government orders does not detract from their validity for being treated as rules. It has been submitted that these Government orders should be treated

as rules amending the earlier rules. Section 24 of the Bengal General Clauses Act provides that when a power to make rules or bye laws is expressly given subject to the condition of the rules or bye laws made after previous publication, the authority making the rules shall publish a draft of the proposed rules or bye laws for the information of the persons likely to be affected thereby. Similar provision has also been made in General Clauses Act. Therefore on a consideration of these provisions I am unable to hold that the above Government orders are rules framed by the provincial government for carrying out the purposes of this Act and they amend the rules framed by the Government as these orders have not been made in accordance with the provisions of Section 66(1) of the said Act which requires previous publication of these rules framed by the Government. The Government orders in question which have not been published at all in the official gazette cannot be treated as rules framed u/s 66 of the Act. The word "may" as used in Section 66(1) means must in the context in which it was used. Furthermore there was no scheme made by the District School Board in accordance with the provisions of Section 23(1)(c) and (d) as well as rules framed u/s 66(2)(n) and (o) of the Act The Government orders being not made in accordance with the provisions of the said Act the District School Board is not legally competent to stultify the provisions of Section 54 of the Act by refusing to consider the applications for recognition pending before it. Moreover, even assuming for argument's sake that these orders are rules made by Government such rules are invalid and bad being contrary to and beyond the rule making power.

27. It has been urged by Mr. Bhunia, learned Advocate appearing on behalf of the Midnapore District School Board that Rule 3 (D) framed u/s 66(2)(p) of the Act is dehorse and contrary to the provisions of Section 54 and 55 of the Act and as such they are bad being substantive ultra vires. This argument is not at all sustainable inasmuch as the District School Board which is an authority created by statute, that is, the Bengal (Rural) Primary Education Act 1930 is not competent to challenge the vires of the statute. This has been held in AIR 1366 SC 1089 K.S. Venkataraman & Co. (P) Ltd -vs- State of Madras at page 1100. In paragraph 24 it has been observed:

But an authority created by a statute cannot question the vires of that statute or any of the provisions thereof whereunder it functions. It must act under the Act and not outside it.

In the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, at page 89 para 32 the Supreme Court observed :

Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act.

28. As regards the submission that in view of the amendment made in 1981 by substituting rule 3(D) of the Rules framed u/s 66(2)(p) of the said Act has done away with the right of the organiser teachers to have their cases considered for

appointment as Assistant Teachers in primary schools at the time it is recognised the petitioners cannot have any grievance for which they can come before this court and their applications are therefore liable to be dismissed, this argument is also not tenable on the ground that the benefits and/or right that was conferred on the organiser teachers by Rule 3(D) of the Rules framed u/s 66(2)(p) of the Act before the amended rules came into force cannot take away that right retrospectively. The amended rule has been framed by the provincial government and not by the sovereign legislature. Such a rule made by subordinate body or a delegate cannot have retrospective effect unless the rule making power in the concerned statute expressly or by necessary implication confers the power in this behalf. In *The State of Madhya Pradesh and Others Vs. Tikamdas*, the above view has been expressed. Similar observation has also been made in the case of *Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others*, where it has been observed :

Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect.

Section 66(1) of the primary Education Act, 1930 also does not expressly confer upon the provincial government the power to make rules retrospectively. Hence, in my opinion, the amended rule 3(D) which was published in the Calcutta Gazette extraordinary at its issue dated 11th September, 1980 cannot have any retrospective effect and so it cannot affect the right conferred on organiser teachers under rule 3(D) of the rules as it was prior to its amendment. The organiser teachers are therefore, aggrieved persons because of the non-consideration of the applications for recognition of primary schools organised on private initiative where they are working. The Submission that these organiser teachers cannot challenge the appointment letters issued by the President, Ad Hoc Committee, District School Board as mentioned in annexure "F" to the petition of Manoranjan Maity, annexure "F" to the petition of Anil Kr. Acharya, annexure "F" to the petition of Birendra Nam Ojha and annexure "M" to the petition of Haripada Mondal is also devoid of any substance inasmuch as those letters empower the teachers given appointment to organise schools in villages where primary schools under private initiative have been set up already and applications for their recognition are pending before the Board. If these teachers appointed by the District School Board, Midnapore are permitted to select sites for setting up new schools under the Board it will certainly affect their right under Rule 3(D) to be considered for appointment as primary teachers. In the premises aforesaid all these applications except the application of Lalit Mohan Saha and others are allowed. Let a writ of Mandamus be issued commanding the respondents to consider and dispose of the applications for recognition filed in respect of the schools wherein the petitioners are working as organiser teachers

in accordance with law as early as possible. Till the consideration and disposal of these applications the respondents are restrained from setting up and/or opening or organising any schools in the villages where these schools are situated and the organiser teachers are working. Let a writ of Certiorari be issued quashing the circulars dated 20th April, 1977 and 27th March, 1978 as mentioned in annexures "I" and "J" to the petition of Haripada Mondal. The application of Lalit Mohan Saha and others is disposed of.

There will, however, be no order as to costs.

Let the operation of the order be stayed for a period of two weeks from today, as prayed for.