

(1999) 07 CAL CK 0050

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 5423 (W) of 1999

In re : Shri Jhalu Roy and Others

Date of Decision : 26-07-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 226, 30(1)
West Bengal Board of Secondary Education Act, 1963 — Section 19A(3)

Citation : (2000) 3 CALLT 391

Hon'ble Judges : Tarun Chatterjee, J

Bench : Single Bench

Advocate : Mr. Amal Baran Chatterjee and Mr. Gulam Mastafa, for the Appellant;
Mr Sumit Panja, for the Respondent

Judgement

T. Chatterjee, J.—By consent of parties, this writ application was taken up for hearing and as the learned counsel for the parties submitted before me that in view of the involvement of question is issue in this writ application, no direction for filing affidavits would be required and the writ application Itself could be treated as on day's list and disposed of.

2. In view of the stand taken by the learned counsel for the parties I hear them and this writ application is now being disposed of by this judgment.

3. This case has a chequered history. The writ petitioner Nos. 1 to 4 are the members of the teaching staff of Kamal Dight Sarkaru Sarkar, Junior High School, Village Kamaldighl, P.O. Dhums Dlghl, Dist. Malda (herein after referred to as the "said school). The writ petitioner Nos.5 to 8 are the members of non teaching staff of the said school and the writ petitioner No.9 is the secretary of the said school. In the year 1994, the President and the secretary of the school along with two other teachers of the same moved an application under Article 226 of the Constitution in this Court which was registered as Civil Order No. 2690(W) of 1994. The said writ application was disposed of by Paritosh Kumar Mukherjee (as His Lordship then was) by directing the District Inspector of Schools, S.E. Malda to take necessary steps for appointment of a District Level Inspection team to enquire into the affairs of the aforesaid school and to submit

a report before the State Government for being forwarded to the West Bengal Board of Secondary Education for granting recognition. In spite of receiving the communication of the order of Parltosh Kumar Mukherjee, J. (as His Lordship : then was), no step was taken for holding such Inspection till 27th June, 1994. However, In the meantime, the Headmaster of the school received a letter from the Secretary of West Bengal Board of Secondary Education conveying to him that by an order dated 15th January, 1999 the President of the Board had rejected the prayer of the school for grant of recognition. Since the writ petitioners Nos. 1 to 8 were directly affected by the aforesaid rejection, they moved another writ application being Co. No.8731(W) of 1996 challenging the aforesaid order of rejection, Issued by the Secretary, West Bengal Board of Secondary Education by which the recognition of the said school was rejected. The other writ petition came up for final hearing before Mr. B.P. Banerjee, J. (as His Lordship then was) on 21st January, 1997 and B.P Banerjee, J. set aside the said order of rejection of the Board as in the opinion of His Lordship the power to grant or review of the prayer for recognition to any Institution was expressly conferred upon the Executive Committee of the Board u/s 19A (3) (c) of the West Bengal Board of Secondary Education Act, 1963, the president of the Board could not exercise the power and function of the executive committee In the facts and circumstances of this case. Taking this view, B.P. Banerjee, J. (as His Lordship then was) directed the executive committee to consider the prayer for grant of recognition in terms of the order passed by Parltosh Kumar Mukherjee J. within a specified period of time. Liberty was also given to the writ petitioner to make an application before the Executive Committee of the Board taken grounds to challenge the validity of the grounds taken by the President of the Board in the said memo and such grounds must be taken into consideration by the Executive Committee in accordance with law.

4. Accordingly, B.P. Banerjee, J (as His Lordship then was) set aside the order of the President of the Board dated 15th January, 1996 and directed the Executive Committee of the Board to decide the prayer of the writ petitioners in the manner indicated above. Accordingly to the writ petitioners, since the order was not complied with, an application for contempt was filed before B.P Banerjee, J and the said application was however, subsequently taken up for hearing by M.H.S. Ansari who disposed of the said contempt application by giving liberty to the writ petitioners to take out appropriate application. Pursuant to the said liberty, the writ petitioners moved another writ application being W.P. No. 22098 (W)/98 which was disposed of by Barin Ghosh by an order dated 7th January, 1999 inter alia by directing the Executive Committee of the Board to consider and dispose of the application as directed by B.P. Banerjee, J. in the first meeting of the Executive Committee of the Board and to communicate the said decision of the Executive Committee of Board within 15 days thereafter. In compliance with the said direction of Barln Ghosh, J. the matter was taken up by the Executive Committee of the Board and after hearing the parties, the Executive Committee of the Board rejected the prayer of the writ petitioners for grant of

recognition of the said school on the following points :

"1. The school was established in 1984 without prior permission from the local authority(s) concerned. The Education Department, Government of West Bengal, vide its Memo No. 1123 (450) (SE) dated 30.12.81, stated that "No school will be organised without taking proper permission from the local authority" and the Education Department. In this case the proposed school violated the above memo issued by the Education Department, Government of West Bengal.

2. To get some opportunities from any corner, one should apply to the authorities concerned praying for the peaceful management and discipline. There are more schools who applied to the Board for granting recognition/upgradation before 1975 and those cases are under consideration. Board after receiving recommendation of the Education Department, Government of West Bengal, grants recognition /upgradation to any school on priority basis. Here the Executive Committee of the Board seems that the petitioner's school is not an exception one.

3. The Board did not receive any recommendation in favour of the petitioners from the State Government which is necessary u/s 19(A)(3)(c)(i) of the West Bengal Board of Secondary Education Act. 1969.

4. There is no need to run a school in the meantime as there are sufficient schools for the Interest of the local students.

5. The proposed school did not fulfill the minimum conditions to run a Junior High School as prescribed in the Management Rules and procedures.

6. The school is a self-styled one. There are many such schools In lanes & alleys of this State. The State Government has kept a strong outlook to these self-styled schools. The Government Itself cannot violate its existing rules and procedures prescribed for running and/ or setting up a new school".

5. It is this Memo Issued by the Executive Committee of the Board which is now under challenge in this writ application.

6. Having heard Mr. Amal Baran Chatterjee, appearing on behalf of the writ petitioners and Mr. Sumit Panja for the State-respondent and after taking into consideration the respective submissions of the learned counsel for the parties and on consideration of the materials on record. I am of the view that no interference can be made against the Memo-which is annexure "I" to the writ application as indicated above in this writ application.

7. Reasons are as follows :--

Mr. Amal Baran Chatterjee, appearing on behalf of the writ petitioners raised two fold questions before me. He first submitted that since the ground on which the memo of the President of the Board was set aside earlier was the same to that of the executive committee of the Board direction must be given to the Executive Committee of the Board to decide the prayer of the writ petitioners for grant of

recognition afresh and in accordance with law.

8. This submission of Mr. Chatterjee was however, hotly contested by Mr. Sumit Panja who appeared for the State respondent. So far as this question is concerned, I do not find any substance in the argument of Mr. Chatterjee. For this purpose, I had compared the grounds on which the decision of the President of the Board was earlier set aside and also the grounds on which the impugned memo was issued. After carefully comparing the grounds of rejection of the earlier memo and also the present memo, I have no hesitation in my mind to hold that the grounds on which the Impugned memo has been Issued are totally different from the grounds on which the prayer for grant of recognition was rejected earlier. That being the position, I am unable to agree with Mr. Chatterjee, that the Impugned memo must be set aside on the question raised by him.

9. It was next contended by Mr. Chatterjee that since education is a fundamental right of a citizen the writ petitioners are entitled to set up educational institution by exercising fundamental right. In support of this contention, Mr. Chatterjee relied on a Division Bench decision of this Court reported in 1998 (1) CLJ 141 (Nabawadip Chandra v. West Bengal Board of Secondary Education) which was based on a decision of the Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.,

10. This submission of Mr. Chatterjee was contested by Mr. Sumit Panja who had appeared for the respondents. According to Mr. Panja, the Division Bench decision relied on by the writ petitioners would not be applicable to the facts and circumstances of this case in view of the fact that the grounds on which the said Division Bench decision was rendered were not the same for rejection of the grant of recognition of the said school so far as the present writ petition is concerned. Secondly, Mr Panja also argued on the basis of a subsequent decision of the Supreme Court in the case of St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., that although right to establish a school is a fundamental right of a citizen, but the Government has also the right to recognise such school if the citizen fulfils certain condition imposed upon him.

11. After hearing the learned counsel for the parties and after giving my anxious consideration to the submissions made on their behalf I am unable to agree with the submission of Mr. Chatterjee. Before I take up this question, it would be fit and proper if some of the provisions of the statute as well as some of the circulars which are relevant for the purpose must be referred to. The Board of Secondary Education, West Bengal by a circular has recognised setting up of a junior high school on satisfaction of the conditions mentioned in the circular to be fulfilled prior to seeking recognition as a junior high school.

12. Section 19A(3) of the West Bengal Secondary Education Act says that subject to any general or special orders of the State Governments, provisions of this Act

and any rules or regulations made therein, the executive committee shall have the power to grant or refuse recognition to Institution and withdraw recognition granted to institution after considering the recommendation of the Recognition Committee.

13. Way back in the year 1978, the Government of West Bengal, Education Department. Secondary Branch Issued a guideline regarding recognition of secondary schools In West Bengal with effect from 1.1.78. The guideline and/or circular issued by the State Government made certain restrictions before grant of recognition of any secondary schools in West Bengal. Paragraph 2(a) of the said circular and/or guideline says that the schools should be selected strictly on the basis of the need of area, population and general educational considerations.

2(b)

2(c)..... (Omitted as not necessary) 2(d) of the said paragraph runs as follows :

Inspection may be taken up in each district with ten to twelve such schools from among each of the categories of_boys_(gtrls and bifurcated girls schools according_to Board"s-circular, if any, The oldest school and the comparatively be Inspected and the report sent to the Central Committee with a priority list as soon as the inspection is completed. The remaining applicant schools may be subsequently Inspected by the district Inspecting team and a penal of eligible schools may be prepared and sent to the Central Committee for recommendation for future recognition.

2(e) Organisations of spontaneous and voluntary schools should from now on. be discouraged. Schools may be started only under Instruc tions from the Government or the Board.

2(f) The Directorate of school Education and the Board have been requested to conduct a survey to identify pockets where new schools are necessary. These areas should be given precedence over other areas in the matter of recognition of school. If necessary. Government may be moved for establishment of new schools, specially in educationally and economically backward areas.

14. In view of the aforesaid statutory provisions made by the State Government, let me now consider whether the writ petitioners were entitled to set up school for grant of recognition before taking any prior permission and before fulfilling the conditions laid down In the aforesaid rules as well as the guidelines/ circular. According to Mr. Chatterjee, in view of the decision of the Supreme Court In the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and In view of the Division Bench decision of the Court reported In 1998 (1) CLJ 141 (Nabawadip Chandra v. West Bengal Board of Secondary Education): the writ petitioners were entitled to as by way of fundamental right to start a school anywhere in India. In my view, the decision of the Division Bench of this Court cannot be applied to the facts and circumstances of this case. In paragraph 14, the Division Bench of this Court observed that there Is no

escape from the position that the education for children up to 14 years is to be provided by the State as it is a constitutional mandate. It appears that the Board of Secondary Education is not aware of the Implementation of the landmark judgment of the Supreme Court (Unnikrishnan's case) In the field of education. It also observed that there cannot be an educational Institution unless the same Is not recognised and the affiliation Is not granted. In the same Judgment, the Division Bench also observed that the State In the Interest of education and according to Its own rules may Impose terms and conditions. Upon the aforesaid observations, the Division Bench directed the Board to grant affiliation of the said Institution. From the aforesaid observations of the Division Bench, It is, therefore, not disputed that the State Government In the Interest of education and according to Its own rules may refuse to grant recognitions In terms and conditions for such grant are not complied with. This Judgment in fact. Is based on the aforesaid decision of the Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , therefore, I had to take Into consideration of the principles laid down: by the Supreme Court In the aforesaid decision. The Supreme Court in Part Vat paragraph 180 had laid down the following principles :

1 The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right Is, however, not an absolute right. Its content and parameters have to be determined In the light of Articles 45 and 41. In other words every child/citizen" of this country has a right to free education until he completes the" age of fourteen years. Thereafter his right to education Is subject to the limits of economic capacity and development qf the State.

2. The obligations created by Article 41, 45 and 46 of the Constitution can be discharged by the State either by establishing institutions of its own or by aiding, recognising and/or granting amilation to private educational Institutions."

3. A citizen of this country may have a right to establish an educational institution but no citizen, person or Institution has a right much less a fundamental right, to affiliation or recondition or to grant-in-aid from the State. The recognition and/or affiliation shall be given by the State subject only to the conditions set out in, and only in accordance with the scheme contained in Part-111 of this judgment. No Government/ university or Authority shall be competent to grant recognition or affiliation except in accordance with the said scheme. The said scheme shall constitute a condition of such recognition or affiliation, as the case may be. in addition to _such other conditions and terms which such Government. University or other authority may choose to impose.

Those receiving aid shall, however, be subject to all such terms and conditions, as the aid giving authority may Impose tn the interest of general public.

15. From the aforesaid principles laid down in the Unnikrishnan's case as referred to above, it is, therefore, clearly evident that the following principles could be culled out on the aforesaid principles of the Supreme Court.

1. Although a citizen of this country may have a right to establish an educational institution, but no citizen, person or institution has a right much less a fundamental right, to affiliation or recognition or to grant-in-aid from the State.

2. The recognition and/or affiliation shall be given by the State subject only to the conditions set out in and only in accordance with the scheme contained in Part III of the Judgment in the case of Unnikrishnan v. State of A.P.

3. The said scheme shall constitute condition of such recognition or affiliation as the case may be in addition to such other conditions and terms which State Government, University or any other authority may choose to impose.

16. Therefore, from the aforesaid principles called out from the decision of the Supreme Court as referred to above. It is, therefore, clear that a citizen may have a right to establish an educational institution but he has no right to ask for affiliation or recognition or grant-in-aid from the State subject to the conditions for such grant of recognition imposed by the State Government in the statutory rules.

17. In a latter decision of the Supreme Court in the case of St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., , the Supreme Court could not find any fault with the legal principles enunciated by the judgment of the High Court which was under appeal before the Supreme Court. The High Court in that case called out the following principles :-

1. The fundamental right declared by Article 30(1) of the Constitution absolute in terms, but subject to regularly measured.

2. There is no fundamental right under Article 19(1)(g) of the Constitution to establish an administrative educational institution, if recognition is sought for.

3. The institutions must be educational institutions of the minorities in truth and reality and not mere marked plantoms.

4. There is no fundamental right to recognition and any institution seeking recognition should abide by the regulations prescribed by the State as conditions therefore.

5. The minority institutions must be fully equipped with educational excellence to keep in step with other institutions in the State.

6. The regulations framed by the State cannot abridge the fundamental right of the minorities and they should be in the interests of the minority institutions themselves and not based on State necessity or general societal necessities.

7. The regulations should be with a view to promoting excellence of educational standards and ensuring security of the services of teachers and other employees of the institutions and in the true interests of efficiency of institutions, discipline, health, sanitation, morality, public order and the like.

8. Even unaided institutions are not immune from the operations of general laws

of the land such as Contract Law, Tax measures, Economic Laws, Social welfare Legislations, Labour and Industrial Laws any similar other laws which are intended to meet the need of the society.

18. From the aforesaid principles No.4 it is, therefore, now an established law that there is no fundamental right to recognition and any institution seeking recognition should abide by the regulations prescribed by the State as conditions therefore. From the aforesaid principles laid down by the High Court of Madras as approved by the Supreme Court, it is, therefore, clear that the writ petitioner has no fundamental right to recognition of its Institution and any institution seeking recognition should abide by the regulations prescribed by the State. Therefore, from the aforesaid analysis of the decisions of the Supreme Court, as well as of this Court, it is, therefore, clear that the writ petitioner by way of a fundamental right is not entitled to recognition and If the institution seeks recognition, It should abide by the regulations prescribed by the State Government. In my view, the recognition procedure has been adopted by the State Government with the subject to closing the "teaching shops" and encouraging genuine institutions. In Paragraph 14 of the said decision, the Supreme Court came to a conclusion after taking into consideration the fundamental right for starting the institution that an Institution seeking recognition is bound to comply with the conditions as indicated in the regulations before it is entitled to recognition. Therefore, I am unable to agree with Mr. Chatterjee that in view of the Unnikrishnan's case the writ petitioner by way of fundamental right is entitled to recognition of the said school. Let me now therefore, consider whether the impugned memo is liable to be set aside on the materials already on record. I have already noted the grounds on which the prayer for recognition was rejected herein earlier. From a perusal of the procedure for recognition and also the conditions for grant of recognition, I have no hesitation in my mind that the conditions laid down could not be fulfilled by the writ petitioners and therefore, the Executive Committee of the Board was fully justified in rejecting the prayer of the writ petitioner for grant of recognition.

No other point was raised on behalf of the writ petitioner.

For the reasons aforesaid, the writ petition fails and is accordingly rejected.

There will be no order as to costs.

19. Petitions rejected