

(1992) 08 CAL CK 0022
In the Calcutta High Court
Case No : Matter No. 3264 of 1987

Md. Abdur Raquib and another

APPELLANT

Vs

Secretary, West Bengal Madrasah Education Board and others

RESPONDENT

Date of Decision : 07-08-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 154, 154(1), 161, 162

Citation : AIR 1994 Cal 122

Hon'ble Judges : K.M. Yusuf, J

Bench : Single Bench

Advocate : Aloke Ghosh, J. Islam, Q. Fazlur Rahman and P.K. Chattapadhyay, P.K. Chatterjee, for the Appellant;

Judgement

1. The petitioners are the Secre-tary and the Headmaster of Nalhati Junior High Madrasah in the district of Birbhum. The Madrasah was recognised as Junior High Madrasah of Class V-VI prior to independence and continued to function till 1961 but remained closed from 1962 to 1975. In 1975 some local people decided for the revival of the said Madrasah as there was no Madrasah in the locality for the teaching of Arabic and Islamic culture among the Muslim people. The local people constituted an Ad hoc Committee to look into the affairs of the Madrasah and appointed teaching and non-teaching staff and as such the old Madrasah was revived with its old name Nalhati Junior High Madrasah and started functioning from the academic year 1976 which seeks teaching and non-teaching staff. It is stated that the Madrasah fulfilled all the conditions required for the purpose of granting recognition. An application was made to the Secretary of the West Bengal Madrasah Eduction Board on 12th September, 1983 in the prescribed form No. 1316 for according revival of recognition as four class Junior High Madrasah from Class V-VIII. The Secretary of the Board forwarded the application by Memo dated 7th November, 1983 to the Director of School Education for taking necessary action regarding inspection of the Madrasah and to submit report justifying the claim of revival of recognition. The Director deputed one Assistant Inspector of Schools (S.E.) (Spl.) to investigate and he

visited the spot on 8th December, 1983. The said Assistant Inspector of Schools submitted a detailed report recommending the revival of recognition and forwarded on 21st December, 1983 with all necessary papers to the Secretary of the West Bengal Madrasah Education Board. After receiving the said report the Secretary convened a meeting of the Board on 20th March, 1984 and it was unanimously resolved that Nalhati Junior High Madrasah be revived and recognition be accorded with effect from 1st January, 1984. Thereafter the Secretary of the Board sought clarification from the Director of School Education by Memo dated 27th March, 1984 whether the Director was agreeable to bear the financial liabilities of the said Madrasah in case of revival. It is further stated that the District Level Inspection Team, Birbhum, adopted a Resolution on 30th April, 1982 regarding revival of recognition of the said Madrasah as four-class Junior High Madrasah and the District Inspector of Schools (S.E.) by Memo dated 2nd August, 1984 submitted a report to that effect to the Director of School Education. It is submitted that after the Resolution of the Board dated 20th March, 1984 at two meetings held on 17th April, 1984 and 14th June, 1984 the same resolution for the revival of recognition of the Nalhati Junior High Madrasah was passed and thereafter the Secretary of the Board obtained a letter being Annexure "B-I" dated 15th June, 1984 regarding revival of recognition. It is stated that the petitioners did not receive any formal letter regarding revival of recognition of the Madrasah from the Board. The petitioner cited examples of Sadharaner Siddiquia Junior Madrasah, Howrah, and Tahibpur Senior Madrasah, Murshidabad, which were granted recognition. It is alleged that the Secretary of the Board assured the petitioners of recognition but nothing was done. It is the contention of the petitioners that the Nalhati Junior High Madrasah has fulfilled all the conditions required for granting recognition and the Director of Education agreed to bear the financial liabilities of the Madrasah.

2. The Secretary of the West Bengal Madrasah Education Board filed Affidavit-in-Opposition and contested the matter. It is specifically stated in the Affidavit that the State Government has specified the duties and functions of the West Bengal Madrasah Education Board under the Resolution No.211-Edn.(M)/SM-5-72 dated 2nd Feb., 1973. It is further stated that the power was granted for recognition and withdrawal of such recognition except Higher Secondary Madrasah subject to the approval of the State Government. It is the definite case of the Secretary of the Board that the Board is required to act on the recommendation of the State Government in the matter of recognition to be granted to any Madrasah. It is stated that for the recognition of Madrasah an application is to be made to the Board which is forwarded to the Director of School Education for causing an inspection by the District Level Inspection Team. The Team's report submitted to the Director of School Education who in turn submits his report to the Education Department of the Government. The Education Department after scrutinising the report and examining the materials on being satisfied about the need of recognition recommends for recognition of the said institution by the Board. The recommendation of the Government is binding on the Board and the Board

grants recognition only upon the receipt of such recommendation from the Government. It is stated that the Board was not in existence prior to independence and was created by the State Government only in the year 1948. It is further stated that at all material times the said madrasah was a Junior Madrasah but not a Junior High Madrasah and it obtained provisional recognition granted by the Government. It is also mentioned that the Board after it was created is required to grant recognition to Junior Madrasah, High Madrasah and Senior Madrasah on the recommendation of the Government. The deponent refused the claim that Nalhati Madrasah was a Junior High Madrasah and not a Junior Madrasah and it is beyond the power of the Board to grant any recognition without the sanction of the State Government. It is also admitted that the letter dated 19th May, 1984 by the Director of Secondary Education informing about involvement of Rs. 80,000/- in case of revival of recognition of Nalhati Junior High Madrasah was never keyed and the letter of 15th June, 1984 appears to be written by the Secretary on erroneous view. It is also stated that no decision was taken at the meetings by the Board held on 17th April, 1984 and 14th June, 1984 in respect of the Madrasah and it was a bona fide mistake on the face of the record as the revival of recognition can only be granted by the Government and none else. It is also submitted that as the Madrasah was not the Junior High Madrasah there cannot be any claim for the revival of the said Madrasah as the Junior High Madrasah. It is denied that the case of (his Madrasah is totally different from the Madrasahs referred to by the petitioners one in Howrah and another in Murshidabad.

3. From the Annexure "B" to the writ petition it appears that this is a Memo dated 19th May, 1984 written by the Director of Secondary Education, West Bengal, to the Secretary of the West Bengal "Madrasah Education Board regarding revival of recognition of Nalhati Junior High Madrasah. Nowhere in the four corners of the said letter of one page it appears that the Director of Secondary Education has accepted that the Government would bear the financial responsibility of the Nalhati Junior High Madrasah. It simply indicates the financial implications in break up form of Headmaster, five Assistant Teachers, one Moulavi, Clerk, and one Peon which amount to Rs. 80,000/-per annum including pay, D.A. etc. for such revival. By this letter of the Director of School Education it cannot be said that the Government accepted to bear the financial responsibility for the revival of recognition of Nalhati Junior High Madrasah. Further the Memo dated 15th June, 1984 written by the Secretary of the West Bengal Madrasah Education Board to the Deputy Director of School Education (I), West Bengal, for the revival of recognition of the said Madrasah refers to the two meetings of the West Bengal Madrasah Education Board held on 17th April, 1984 and 14th June, 1984 which decided to accord revival to the said Madrasah as Junior High Madrasah and it is recorded also by the Secretary in the said Memo that such recognition was accorded with_ the_expectation_that the financial liabilities would be borne in full by the Government The Secretary asked for confirmation which was never done.

4. There is no denying as far back as in 1948 the provisional recognition of Nalhathi Junior Madrasah in the district of Birbhum was extended for a further period of two years by the Inspector of Schools, Burdwan Division, by Memo dated 4th May, 1948. The District Level Inspection Team at its meeting dated 30th April, 1982 recommended for recognition of the said Madrasah as a four-class Junior High Madrasah. It was stated in the said resolution that this Madrasah was a two-Class Madrasah up to 1961. The District Inspector of Schools (S.E.), Birbhum, sub-mitted the inspection report of the District Level Inspection Team to the Director of School Education by Memo dated 2nd August, 1984. At the meeting held on 27th November, 1984 the Inspection Team wrote about the defunct Nalhathi Junior High Madrasah as follows:-

"Long past there was a Junior High Madrasah on Government Land at Nalhathi (the Madrasah being lease for 19 years) but subsequently the same was defunct in the year 1981. The local people started a Jr. High Madrasah on the same plot of land as stated above and still it has been running without any break. The population of the locality needs such a type of institution there. The case is recommended."

The West Bengal Madrasah Education Board at its two-day meeting held on 2nd and 3rd December, 1983 resolved that the case of revival of the Nalhathi Junior High Madrasah at Birbhum may be referred to the Director of School Education for enquiry in view of their prayer. By Memo dated 21st December, 1983 the Director of Secondary Education forwarded to the Secretary of the Board a report drawn by the A.I. of Schools (S.E.) (Spl.), for favour of taking necessary action. The said report is the same which has been referred to hereinbefore of dated 19th May, 1984 wherein the Director of Secondary Education stated the financial implication of the teaching and non-teaching staff in case of revival of re-cognition of the said Madrasah would amount to Rs. 80,000/- per annum. It must be made clear here that this Memo of 21st February, 1983 by the Director of Secondary Education to the Secretary of the Board appears to be of no value because it is not the Board who would arrange the sum of Rupees 80,000/- annually but it is for the State Government to taking necessary action on the recommendation of the Director of Secondary Education and the expenses would have to be borne by the Government and not by the Board. The Sub-Committee of the West Bengal Madrasah Education Board also at its meeting of 13th June, 1984 requested the Director of School Education to submit report of financial liability.

5. From the aforesaid discussion it is crystal clear that the West Bengal Madrasah Education Board is not standing in the way of the revival of recognition of Nalhathi Junior High Madrasah. The only difficulty that comes in the way is about the financial liability that will have to be borne by the State Government. The Board has recommended the case of the Madrasah more than once and the District Level Inspection Team too found the case worth recommending and did so. The Director of Secondary Education too examined the financial implication of the

revival of the recognition of the said Madrasah and came to the conclusion that it would require Rs. 80,000/- per annum from the State Exchequer. No doubt, in my opinion, this is a fit and proper case for the revival of recognition of Nalhati Junior Madrasah as four-Class Junior High Madrasah V to VIII. But the only big question is the financial responsibility which such revival of recognition will entail. There is no doubt that the District. Level Inspection Team found that the area is thickly populated and the revival of recognition of a Junior High Madrasah is necessary but its financial implication which was Rs. 80,000/- in 1984 must have increased during the last eight years considerably and would approach to near about Rs. 1 lakh. The Court cannot compel the State Government to provide this huge amount per annum from its coffer unless if it so decides on it soon. The Court can only direct the State-respondents to consider to provide the financial expenditures of the said Madrasah but it is for the Government to scrutinise and see from its financial policy view point whether it can bear such expenses, more so on this Madrasah. The best course will be to refer the matter to the Secretary (Secondary Education), Education Department, Government of West Bengal, to examine the matter and give his considerate opinion after consultation with the Finance Department.

6. During the course of argument of this case, the Court suo motu asked a question. On the basis of which Statute or Statutory Rules and Regulations the West Bengal Madrasah Education Board is functioning? This point struck the Court from the Affidavit-in-Opposition filed by the Secretary of the West Bengal Madrasah Education Board. In the said Affidavit-in-Opposition it is stated in paragraph 4(C) on page 5 as under:-

"The said Board was not in existence prior to independence and was created by the State Government only in the year 1948."

It appears that by the Resolution being No.211-Edn.(M)/5-M-572 dated 2nd Feb., 1973 the Education Department of the Government of West Bengal constituted/reconstituted the West Bengal Madrasah Education Board. The first two clauses read as under:-

"(1) The question of reconstitution of the West Bengal Madrasah Education Board and rationalisation, its duties and function has been engaging the attention of the Government for some time past.

(2) The Governor has, accordingly, been pleased to resolve that the "West Bengal Madrasah Education Board" be constituted with the following members"

Thereafter clause 5 of the said resolution reads as under:-

"Subject to any general or special orders of the State Government, the duties and functions of the West Bengal Madrasah Education Board shall be inter alia as follows....."

The said clause 5 enumerates seventeen functions of the Board including clause 5(12) which gives "prerogatives" to set aside any election to any managing

committee of Madrasah under its jurisdiction and to appoint Ad hoc Committee or an Administrator. The clauses 6 and 7 of the said resolution gives the State Government wide powers, apart from supervisory control, to suspend the execution of any resolution or order of the Board and prohibit the doing of any act which purports to be done by virtue of this Resolution if the State Government is of the opinion that such resolution, order or act is in excess of the powers conferred by or under the parent Resolution.

7. Before I enter into the main question it shall not be out of place to mention that after the partition of the country, the Calcutta Madrasah ceased to function and became defunct. All the movable properties of the Calcutta madrasah were removed to Dacca in East Pakistan. One must not forget that the oldest, largest and most important of the old scheme Madrasahs was the Calcutta Madrasah which was founded by Warren Hastings in 1781 and which all these years retained its uniqueness as the principal centre of Islamic scholarship. It was at the initiatives of Maulana Abul Kalam Assad, Education Minister of India, and with the cooperation of Dr. Bidhan Chandra Roy, Chief Minister of West Bengal, that the Calcutta Madrasah was revived in late 1948 with Maulana Sayeed Ahmad Akbarabadi, an eminent scholar of Arabic and Persian, as its Principal; and the West Bengal Madrasah Education Board was created.

8. Now the question arises under which authority of law or statutory force the Madrasah Education in West Bengal is functioning. The Resolution of 2nd February, 1973 as mentioned hereinbefore simply says "The Governor has, accordingly, been pleased to resolve that the "West Bengal Madrasah Education Board" be constituted" but it is not stated under which provision of the Statute or the Rules framed thereunder or the Constitution of the Governor is exercising the power to constitute the West Bengal Madrasah Education Board. It appears a simple Government Order because an executive power under Article 154 of the Constitution could not have been delegated or vested to the Board as directed to be constituted. The Article 154(1) of the Constitution of India states as follows:-

"The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution."

Here the executive power is to be exercised in accordance with the Constitution. The expression "executive power" is very wide. It connotes the residue of governmental function that remained after the legislative and judicial functions are taken away and also it includes if necessary for the carrying on or supervision of the general administration of the State including both a decision as to action and the carrying out of the position *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, and *The State of Bihar Vs. Rani Sonabati Kumari*, No such situation arises for the Government of West Bengal to exercise the authority under Article 154(1). The said resolution also does not come within the purview of Article 245 of the Constitution. The statutory law relating to Primary

Education in Bengal actually started with the Bengal (Rural) Primary Education Act, 1930 and thereafter the West Bengal Urban Primary Education Act, 1963 and then the West Bengal (Rural) Primary Education (Temporary Provisions) Act, 1969 and finally it rests with the West Bengal Primary Education Act, 1973 with Rules and Regulations made thereunder. The Secondary Education is controlled by the West Bengal Board of Secondary Education Act, 1963 with its Rules and Regulations and the Higher Secondary Education is under the statutory control of West Bengal Council of Higher Secondary Education Act, 1975 with Rules and Regulations thereunder. The various Universities of West Bengal have their own Acts and Regulations. But so far as the Madrasah Education in West Bengal is concerned it is an admitted position that the West Bengal Madrasah Education Board was set up after partition in 1948 at the Hooghly Madrasah in the district of Hooghly and subsequently it was shifted to Calcutta. There are some three types of Madrasahs : Junior Madrasah, High Madrasah and Senior Madrasah and all these Madrasahs come within the control of the West Bengal Madrasah Education Board. The West Bengal Madrasah Education Board is being constituted/ reconstituted after the expiry of its term on the basis of notification from time to time and is based mainly on the parent Resolution on 2nd February, 1973. The Madrasah Education in West Bengal has no Act, Rules and Regulations of its own and is being administered by one Circular after another either by the Government or by the Secretary of the West Bengal Madrasah Education Board. It appears that by Circular No. 1(MC)/1981 dated 16th September, 1981 it is notified by the Secretary of the West Bengal Madrasah Education Board that the Rules for the Management of Non-Government Institutions (Aided and Unaided), 1969 with all amendments would be applicable to the Madrasahs in terms of the West Bengal Madrasah Education Board's Resolution adopted at its meeting held on 9th September, 1981. It is further stated in the said Circular that the procedure for election as laid down by the West Bengal Board of Secondary Education in the light of the amended Rules is also applicable to the Madrasahs under the West Bengal Madrasah Education Board without any change. But the most significant aspect of the entire exercise is that the Management Rules of 1969 and the Procedure of Election of the West Bengal Board of Secondary Education have been made applicable to the Madrasahs by the West Bengal Madrasah Education Board without any statutory provisions or Act of legislature applicable to the Madrasahs. If there is no legislative enactment controlling the Madrasah Education in West Bengal then how the Management Rules and the Election Procedures of the West Bengal Board of Secondary Education can be picked up and implemented in the West Bengal Madrasah Education System. The basic foundation of the Resolution dated 2nd February, 1973 is not only ab initio void and illegal but the entire Madrasah Education in West Bengal is based on no foundation and is surviving on the mercy of the Government Orders and Circulars issued from time to time as well as the illegal Circulars issued by the Secretary of the West Bengal Madrasah Education Board. The entire Madrasah Educational System is a house of sand. The Education Department of the Government of West Bengal as well as the Directorate of Secondary Education

from time to time are issuing instructions for the recognition of Madrasahs in West Bengal and the inspection thereof by the District Level Inspection Teams but all the actions taken are not based on statutory provisions. The Rules are framed by the West Bengal Madrasah Education Board for the admission of students in Junior, Junior High Madrasahs without knowing the fact that the West Bengal Madrasah Education Board itself is a non-entity in the eye of law.

9. Mr. Chatterjee for the defence made the contention that on the basis of the Resolution dated 2nd February, 1973 the West Bengal Madrasah Education Board is functioning and this Resolution was published in the Calcutta Gazette and this is nothing but an executive order of the State Government by the Governor under Article 154 of the Constitution. It is submitted that the Resolution as adopted by the Governor under the power and/or authority conferred under Article 154 provided that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The learned Advocate referred to Articles 154, 161 and 162 of the Constitution and submitted that the entire executive power of the State vests in the Governor in respect of all matters in relation to which the State Legislature has power to make law and the Resolution in question was lawful, valid and binding. It is further submitted that so long the Legislature does not provide a substitute by passing appropriate law the Resolution of the Government cannot be questioned and cannot be said to be invalid and ultra vires. It is nobody's case that the West Bengal Legislative Assembly did pass any law regarding the Madrasah Education or administration of the same. It is submitted that the Madrasah Education in Bengal is a very old system and the Madrasah Education Board was in existence even before the partition of Bengal and was known as Board of Central Examination, Bengal, and the different Madrasahs were to abide the terms of the said Central Board. It is further submitted that the executive power of the Government may do any act provided the same is not assigned by the Constitution to any other authority and the same does not encroach upon the legal right of an individual. It is admitted that in the decision of Hazi Mohammad Tafiluddin Sarkar v. State of West Bengal (1980) 1 Cal HN 379, it was held that the constitution of the Madrasah Education Board under the said Resolution of end February, 1973 was invalid and unauthorised and in consequence the recognition or non-recognition of any Madrasah by the Board was without jurisdiction and of no consequence. Mr. Chatterjee also submitted that once the Governor exercises power under Article 154 and adopts a Resolution, the said Resolution should have the same effect as that of the statutory provision. In support of his contention he cited some decisions,

10. Let me also deal with the defence argument as placed by Mr. Chatterjee. His reliance on Articles 154, 161 and 162 of the Constitution will not give him any safe protection. The first part of Article 162 reads as follows:-

"Subject to the provisions of this Constitution, the executive power of a State

shall extend to the matters with respect to which the Legislature of the State has power to make laws:"

The Executive Power of Article 154 must be read along with Article 162 and as such this "means that the State Executive has the power to make any regulation or order which shall have the effect of a "law" so long as it does not extend to a subject with respect to which the State Legislature has no competence under the 7th Schedule". It has been admitted that as far back as in 1979 the case of Hazi Mohammad Tafiluddin Sarkar (1980 (1) Cal HN 379) (supra) was decided and it was held that the Madrasah Education Board by virtue of the impugned Resolution was invalid and unauthorised and any act of the Board was without jurisdiction but till this date the Government did sit tight and did not act in accordance to the decision. This decision is binding and the Court cannot say "no" to the said decision. But this Court will go a step further and say that the legal right of an individual is hundred percent effected by the illegally constituted West Bengal Madrasah Education Board. It is well known that the; Madrasah Education Board confers the degrees of Alim, Fazil, Mumtazul Nuhad-disin, etc. which are equivalent to Secondary Examination, Graduation and Master Degrees, etc. It is surprising how the West Bengal Madrasah Education Board which is not the creation of any statute can confer any certificate, degree or diploma until it has the force of law backed by a legislation. Can the West Bengal Board a Secondary Education or the West Bengal Council of Higher Secondary Education or the University of Calcutta or any other Universities confer certificates and degrees without the authority of an Act of Legislature? If they would have conferred upon students certificates, diplomas and degrees then what would have been the fate of such certificates/degrees of those bodies in the eye of law vis-a-vis such recipients. It is absurd to say that the Resolution of 2nd February, 1973 has the effect of statutory provisions under Article 154. The statutory laws can only be enacted either by the State Legislature or Parliament and not by the Governor under Article 154 of the Constitution. Much substance has been made of Article 258(1) but the Supreme Court has made it abundantly clear that under clause (1) of this Article only executive functions of the Union or of the President may be delegated, not judicial or legislative functions of the Union, such as the power of compulsory acquisition of property specified in Article 298. The Supreme Court said : Taking therefore the language used in Art. 258(1), it is capable to only one meaning viz., that it enables the President to as the State Government or its officers, with its consent, to carry out functions which pertained to the executive power of the Union vesting in him and to no other kind of power" Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others, I cannot understand how the decision reported in Jitendra Nath Banerjee and Others Vs. West Bengal Board of Examination for Admission to Medical, Engineering and Technological Degree Colleges and Others, is applicable in this case as cited by the defence Counsel.

11. It must be noted that the power to administer the Madrasah Education in West Bengal lies with the Government of West Bengal and such power being

government orders could not be delegated to a private body like West Bengal Madrasah Education Board under Article 154 of the Constitution which deals with the executive powers of the State. It must be taken note of that the "executive power" would include quasi-judicial powers vested in the State Government by Statute so any power delegated by State Government by virtue of the Resolution dated 2nd February, 1973 was quite improper and such power could not be exercised. The executive power when exercised must be statutory in entirety and must be exercised strictly in conformity with the conditions and limitations imposed by the Statute. The position certainly would have been different if the West Bengal Madrasah Education Board would have derived its power from any statute or statutory rules. In the case of Hazi Mohammad Tafiluddin Sarkar (1980 (I) Cal HN 379) (supra) this point has been dealt at length. It is surprising that the Government of West Bengal was quite careless to consider this important aspect of Madrasah Education in West Bengal. There is a network of various types of Madrasah throughout the State and hundreds of teaching and non-teaching staff as well as thousands of students are engaged in Madrasah Education System and are getting their education as well as the certificates and degree/ diplomas. The certificates of Primary, Secondary, Higher Secondary and University degrees have the strength of legislative Statutes but this institution which is under discussion has no such legislative sanction to grant certificates or diplomas and has no statutory force or legal authority which could come to its rescue. The Mad-rasah system of education in West Bengal is highly discriminatory when compared with the Primary, Secondary, Higher Secondary, University education and is directly hit by Article 14 of the Constitution. The entire system is based on no foundation but was going on as a scraped show. This situation cannot be allowed to continue any further and the State Government must scrap the barrel and think over it very seriously and must find a way out. By Government Order or Resolution a comprehensive educational system cannot continue to run for decades. It must be put on a firm legislative footing with comprehensive statutory provisions. The impugned Resolution, too, is silent upon with authority it has been issued.

12. It must be said that the jurisdiction of the Writ Court is wide enough to give substantial relief and to do Substantial justice. Article 226 of the Constitution confers on the Court very wide powers which were never possessed before and as powers under this Article are discretionary, no limit can be placed upon discretion, of course, the discretion must be reasonable and not arbitrarily. The power can also be exercised for a non-fundamental right. The concluding words of Article 226(1) "and for any further purpose" make the jurisdiction of the High Court quite extensive than that of the Supreme Court because these words are absent from Article 32. It has been laid down in the case of P.J. Irani Vs. The State of Madras, that the High Court under the writ jurisdiction like those of the Supreme Court under Article 32 is not confined to the prerogative writs and the High Court while issuing directions and orders can travel beyond the contents of the writs. It must also be noted that the High Court can also mould the reliefs to

meet the peculiar and complicated re-quirements of this country, provided, in so doing, the High Court does not contravene any provision of the Constitution or the law declared by the Supreme Court in this behalf. The High Court has the power to set aside as ultra vires the executive order.

13. In the circumstances, I hereby strike down the entire system of Madrasah Education in West Bengal as administered by the Government of West Bengal and hold the Resolution being No. 211-Edn.(M)/5-M-572 dated 2nd February, 1973 containing the duties and functions of the West Bengal Madrasah Education Board including all Circulars and orders relating thereto a initio void, illegal and ultra vires Article 14 of the Constitution. The constitution and/or the reconstitution of the West Bengal Madrasah Education Board from time to time was bad all illegal and without any legislative and constitutional authority.

14. To avoid serious consequences on the Madrasah Eduction in West Bengal and to save hundreds of Madrasah, their staff and students, I stay my order for six months from date and direct the State of West Bengal and the Secretaries of the Department of Education, Government of West Bengal, to take immediate steps to give statutory status to the Madrasah Education in West Bengal and implement the same immediately within the aforesaid period. During the period of stay the words "with prerogatives" in Clause 5(12) of the Resolution dated 2nd February, 1973 shall remain inoperative. Further, during this period no recognition shall be accorded to any Madrasah.

15. I further direct that the case of the writ petitioners regarding the revival of recognition to Nalhati Junior High Madrasah will be considered by the appropriate authority immediately after the entire system of Madrasah Education is given a legislative shape.

16. The Registrar, Original Side, is direct-ed to immediately send one xerox copy each of dictated order to the following:- (1)Mr. Satyasadhan Chakraborty, Minister of Higher Education; (2) Mr. Achintya Roy, Minister of Primary and Secondary Education; (3) Mr. Anisur Rahman, Minister of State, Primary, Secondary and Madrasah Education; (4) the Chief Secretary; (5) the Secretary, Higher Education; (6) the Secretary, Secondary Education; (7) The Director of Public Instruction; all of the Government of West Bengal at Writers" Buildings, Cal-cutta; (8) the Secretary, West Bengal Madrasah Education Board, 19, Haji Md. Mohsin Square (Wellesley Sq.), Calcutta-16; and (9) the Principal, Calcutta Madrasah, 21, Haji Md. Mohsin Square (Wellesley Sq.) Calcutta-16.

17. The Registrar is further directed to send the copies by messenger through hand delivery.

18. All parties including those mentioned hereinbefore to act on signed xerox copy of the minutes of this dictated order on the usual undertaking.

19. Order accordingly.