
(1998) 08 CAL CK 0030
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction C.O. No. 17380 (W) of 1996

Md. Sirajul Haque

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

Citation : (1999) 1 CALLT 59

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Mr. K.K. Maitra, Mr. Alak Ghosh and Md. Mojbu Sk, for the Appellant;
Mr. Pratap Kumar Sen, for the Respondent

Judgement

S.B. Sinha, J.—This application is directed against an order dated 20.8.96 as contained in annexure "H" to the writ application, whereby and whereunder the West Bengal Board of Madrasah Education rejected the petitioner's application for upgradation of Madrasah.

2. The Madrasah in question is an old one. As far back in the year 1984, It filed an application for upgradation of the said Madrasah. From a perusal of the inspection report as contained in annexure "C" to the writ application, it appears that recommendation had been made in favour of such recognition stating:

"The school has got quite a thick enrolment and the staff is adequately qualified. The institution is free from objection i.e. surroundings. Examined the school documents and its accounts. The maintenance of accounts need be more well-kept."

From a perusal of the said inspection report, it appears that the said Madrasah fulfils the conditions for such recognition. However, as despite the same no step had been taken by the authorities concerned, the petitioner had to move this court under Article 226 of the Constitution of India, which was marked as C.O. No. 8414 (W) of 1992. By an order dated 8.12.05, G.R. Bhattacharjee, J. having

regard to the facts and circumstances of the case, disposed of the writ application with directions. Pursuant to such direction, another inspection was held. The said inspection report is contained in annexure "F" to the writ application, wherein it has been noticed that whereas the school was recognised as a Class 2 School from 1.1.71, it was granted recognition as 4 Class School from 1.1.82. It further appears that it was noted that the nearest Madrasah, being Dantura Junior High Madrasah is situated at a distance of 9 K.Ms east from the Madrasah in question. Despite the same, the impugned order has been passed, inter alia, on the ground that there are several Schools in the locality and allegedly qualification of some of the organising staff appointed by the Madrasah authority for upgradation, are not in accordance with the approved staff pattern of a High Madrasah. It was further held that-

"4) The D.L.I.T. In their report did not recommend this Madrasah for upgradation.

5) The Govt in the School Education Department has not specifically recommended the Madrasah for up gradation

3. Learned counsel appearing on behalf of West Bengal Board of Madrasah Education has placed before this court a guideline for grant of such recognition, which is contained in circular No. 24-SE(S) dated 12.1.98. In the said guideline, one of the conditions for recognition of Madrasah is that normally the minimum distance from one Madrasah to another Madrasah or other institutions providing educational facilities of such or equivalent standard should be 5 K.M.s.

4. Mr. Maltra, learned counsel appearing on behalf of the petitioner submits and in my opinion rightly, that as Madrasahs stand on a different footing. In as much as, Arabic is taught therein, matter relating to grant of recognition of Madrasah, should not be co-related with grant of educational facilities in other institutions, as in such institutions there cannot be any provision for teaching of Arabic subject.

5. Mr. Sen appearing on behalf of respondent No. 3, however, has placed before this court the order passed by the Secretary, Education Department, wherein it was noticed:

"In compliance with the order of Hon'ble Mr. Justice G.R. Bhattacharyya date 8.12.1995 Palkar Junior High Madrasah, Birbhum was inspected by the D.L.I.T Birbhum on 25.4.96. It appears that, the Madrasah got recognition as a 2-class Madrasah from 1.1.71 and as a 4-class Madrasah from 1.1.82. This is a co-educational Madrasah. The Madrasah has appointed six(6) teaching and two (2) non-teaching staff but unfortunately though this is a co-educational Madrasah not a single lady teacher has been appointed. It further appears from the inspection report that Palkar High School is located at a distance of 1 km. from the proposed Madrasah and there are five (5) Schools and one Madrasah at a distance between 7 to 9 kms. Further, there is only one Madrasah viz., Dantura Junior High Madrasah which is located at a distance of 9 kms. In the east, from the Palkar Junior High Madrasah which has been proposed to be upgraded-as the

only feeder Madrasah to feed the Palkar Junior High Madrasah. As such, keeping in view the number of Schools/ Madrasah in the locality as also in the vicinity of the locality and considering the fact that only one feeder Madrasah is located at a distance of 9 kms., up gradation of Palkar Junior High Madrasah, Birbhum does not appear to be a justifiable proposition."

6. It is not for the Education Department to consider as to whether a lady teacher is bound to be appointed by a co-educational institution. It further appears that an Irrelevant fact namely, location of certain Schools within a distance of 5 kms., had been taken into consideration. In view of the inspection report aforementioned, it is evident that only one Madrasah is existing which is at a distance of 9 kms. of the proposed Madrasah. Furthermore, the other reasons assigned in the affidavit in opposition filed by the respondent No. 3, other than what had been stated in the Impugned order, cannot be looked into, in as much as, the authorities concerned had been performing a statutory duty. It is now a well settled principles of law that when a statutory authority passes an order under a statute, reasons in support thereof cannot be supplemented by affidavit. Furthermore, it is evident from the inspection report of the District Level inspecting Team that they have not found that the Madrasah in question is not fit for upgradation. In fact, both the Education Department and the West Bengal Board of Madrasah Education in that situation ought to have taken into consideration the relevant fact, namely, that such recommendation had been made by the inspector in terms of annexure "C" to the writ application. In view of the fact that while passing the Impugned orders as contained in annexure "H" to the writ application and annexure "A" to the affidavit in opposition, West Bengal Board of Madrasah Education as also the Secretary, Education Department have taken into consideration certain irrelevant facts and have failed to consider the relevant facts, there exists an error apparent on the face of the record. Furthermore, it is now a well settled principles of law that a statutory authority must pose unto itself, the correct question with a view to arrive at a correct finding of facts, and failure on the part of such authority to do so, would amount to mis-direction in law. Furthermore, if there is any deficiency on the part of the Madrasah authorities, the same should be brought to their notice so that they can rectify the same.

7. For the reasons aforementioned, the impugned orders cannot be upheld. The order dated 20.8.96 as contained in annexure "H" to the writ application and the order as contained in annexure "A" to the affidavit in opposition are quashed and the Secretary, Education Department as also the West Bengal Board of Madrasah Education are directed to consider the matter afresh in accordance with law and in the light of the decision of this court in the case of Nabadwip Chandra Das v. State of West Beng at, reported in 1998(2) CLJ 141. Such an order should be passed at an early date and preferably within 12 weeks from the date of communication of this order. The Secretary, Education Department shall also give an opportunity of personal hearing to the representative of the petitioner.

8. Urgent xerox certified copy be supplied on priority basis.
9. Petition disposed of.