
(2001) 11 CAL CK 0015
In the Calcutta High Court
Case No : Writ Petition No. 324 of 2000

Nazrul Islam

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 29-11-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2002) 1 CALLT 412

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Kamallesh Bhattacharjee and Jakir Hussain, for the Appellant; Pratap Kumar Sen and Subrata Mukherjee, S.R. Islam, for the Respondent

Judgement

Amitava Lala, J.—This writ petition is made basically for the purposes of recognition of a Junior High Madrasah and regularisation of services of the teaching and non-teaching staff of the Institution. The whole contention of the writ petitioner is that the order impugned as passed by the appropriate authority of the West Bengal Board of Secondary Education in refusing the grant of recognition is perverse which is apparent from the face of it. Such order Impugned is apparent from the face of it. Such order Impugned is under memorandum No. 1725 dated 4th November, 1999.

2. This is not the first writ. The writ jurisdiction was invoked but this is the third time when the writ Jurisdiction was Invoked in the similarly placed situation. In the last order the earlier writ petition was disposed of. A Bench of this Court squarely held that refusal of recognition is outcome of discrimination giving details of comparable charts. But inspite of the same recognition of the institution has been refused. According to the petitioner, one cannot sit over the order of the Court as an appellate authority unless and until a formal appeal is preferred. When neither any appeal preferred nor any review application made the order has so to bind one. Thus, the action on the part of the authority concerned is contrary of law. Without going into such controversy I have to say

that imparting education is in the hands of the people who have made the institution but giving recognition to such institution is in the hands of State machinery made for the same. This is basic parameter of Unnikrishnan's case reported in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . Unnikrishnan's case was considerably followed by a Division Bench of this Court in 1998(1) CLJ 141 (Nabadwip Chandra Das and Ors. v. West Bengal Board of Secondary Education and Ors.). But according to me. In the Unnikrishnan's case the Supreme Court never held that right of imparting education is also a right of recognition of such Institution by which education is imparted. However, recognition of Institution sometimes Interfered with by the Court of law when it has been delayed or refused which ultimately affect imparting education. In such case, recognition will directed to be made or will directed to consider specially for fulfilment of any deficiency whatsoever. Law of giving recognition cannot be said to be a law of refusal of giving recognition but giving recognition with due care. I find in most of the cases recognitions are being refused only for monetary consideration of the State or for many insignificant causes which could have regularised as a matter of course giving a clear guidelines that unless and until such conditions are not fulfilled it will be possible for such authority to give recognition. But in most of the cases the authorities are following straight Jacket formula which is not the Intention of the legislature.

3. In the Instant case, it has categorically held by a Court of Law that the discrimination in granting recognition has been caused. Therefore, there is hardly any scope for the Board in not giving recognition excepting completions certain formalities for giving recognition. A legitimate expectation will be a futile attempt even after making attempt to give shape of the same by the Supreme Court and High Courts when the authorities fall to take a bona Ode stand or proceed indiscriminately. It is an accepted scenario that inspite of passing repeated orders by the Court of law State machineries are taking an Indifferent stand. If the same has been caused it will definitely be a good stand of passing mandatory order as against such state machinery. As per guideline giving recognition to the Madrasah, Government of West Bengal, School Education Department, Secondary Branch under memorandum No. 24-SE(S)/35-34/97 dated 12th January, 1998 requirements are as follows: (1) Site and accommodation; (2) Teaching and non-teaching staff; (3) Furniture; (4) Sanitary arrangement; (5) Drinking water (6) Laboratory for elementary science; (7) Library. (8) Management of the Madrasah: (9) Reserve fund: (10) Roll strength: (11) Maintenance of the records; (12) Distance of separate Madrasahs/ other institutions; (13) Mode of application: (14) Inspection following an application: (15) Recommendation of the State Government.

4. Therefore, all above are the administrative exigencies for the sake of giving recognition but not made for not giving recognition. Thus, administrative exigencies are to be fulfilled with the help of the administration. An administrative requirement is to follow statutory requirement. Therefore If

statute gives certain power to administration to give recognition it has to be made upon fulfilment of such condition. Therefore, one has to keep in mind before giving recognition that there is hardly any scope of refusing the same but the same can be defaulted specially for fulfilment of the administrative exigencies. Hence, when a Judicial order is passed giving particulars of discrimination having been done in respect of the institution. The requirements of administrative exigencies cannot prevail over the same unlike the statutory requirement. In that case, scope of the administration is to show the respect to the Judiciary and to call upon the authorities of the Madrasah to fulfil the requirements, if not available within a prescribed period and complete the job of recognition.

5. In *Al-Karim Educational Trust and another Vs. State of Bihar and others*, It was held that if it is found that the affiliation is being withheld reasonably or the decision is being prolonged for one reason or the other, this Court would reluctantly be constrained to exercise jurisdiction without deluting the importance of fulfilment of the essential requisites for granting recognition. In *St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others*, etc. etc., it has held that seeking recognition is not fundamental right and any institution seeking recognition should abide by the conditions or recognition prescribed by the State as conditions therefor.

6. However, coming back to the order Impugned I find that ultimately the refusal has been made by the authority holding that State Government, School education department reconsidered the case but unable to recommend for recognition to the West Bengal Board of Madrasah Education. Possibly this observation is made on the plea of earlier conditions that without recommendation of the State Government no Madrasah will be recognised.

7. I have considered the matter carefully upon taking note of each and every aspect and find that this Court was pleased to pass an order giving recognition of the Institution reported in 2000(2) CLT 35 (The Organising Managing Committee. *Kendita Rakshakali Vtdyamandir and Ors. v. West Bengal Board of Secondary Education and Ors.*) and held as follows:

"Under the circumstances the following orders are passed :

The District Inspector of Schools (SE) concerned is directed to get the concerned School Inspected by the D.L.I. Team within the period of four weeks from the date of communication of this order. At the time of consideration, the present position or of the teaching and non-teaching staff, class rooms" of the Schools as well as strength of the students, building etc. and all other materials to be taken into account. The District Inspector of Schools (SE) concerned will forward the report of D.L.I. Team with his own comments thereon to the Director of School Education, West Bengal within two weeks from the date of submission of the report and Director of School Education, West Bengal shall forward the report and the necessary papers with his own comments thereon to the Educational

Department, Government of West Bengal within four weeks from the date of receipt necessary papers from the D.I. of Schools (SE) concerned.

The Educational Department shall then forward the report and the necessary papers with their own comments thereon to the West Bengal Board of Secondary Education within a period of two weeks from the date of receipt all the necessary papers from the Director of School Education. The West Bengal Board of Secondary Education shall then consider the question of recognition according to the concerned School and pass necessary orders in the matter within a period of six weeks from the date of receipt of the necessary papers from the Education Department. This order is mandatory in respect of the prescribed period."

Accordingly, the writ petition is thus disposed of.

There will be no order as to costs."

8. The principle as laid down by this Court in respect of giving recognition does not require any deviation under ordinary circumstances. But deviation requires when a Court of Law has come to a definite finding that discrimination has been caused which is the cause of action by way of explanation under the order impugned. Therefore, this Court has to take into account the ratio of the Supreme Court Judgment reported *Al-Karim Educational Trust and another Vs. State of Bihar and others*, where it was categorically held that if it is found that affiliation has been withheld unreasonably or the decision is being prolonged for one reason or the other, this Court would, reluctantly, be constrained to exercise Jurisdiction without deluttng the importance of fulfilment of the essential requisites.

9. Therefore, I hereby direct the authority to give recognition to the concerned Madrasah upon verifying the essential requisites within a period of three months from the date of communication of this order.

10. Thus, the order impugned stands set aside.

11. The question of regularisation of the service of the teaching and non-teaching staff of the Madrasah has not been considered by the Court in this writ petition because the availability of the circumstances is yet to be matured by the process of recognition of the institution in future.

12. However, they are at liberty to approach the concerned District Inspector of Schools (SE), Uttar Dinajpur within a period of two weeks from the date of communication of the order of recognition and in such case the authority concerned will evaluate and come to an appropriate conclusion in that respect within a period of one month from the date of such approach being made since such period is specified in the rule.

Thus, the writ petition stands disposed of.

No order is passed as to costs.

Xeroxed certified copies of this judgment will be supplied to the parties within seven days from the date of putting requisites for drawing up and completion of the order and certified copy of this Judgment.

All parties are to act on a signed copy minute of the operative part of this Judgment on the usual undertaking and subject to satisfaction of the Officer of the Court in respect of above.