

(2004) 09 CAL CK 0009

In the Calcutta High Court

Case No : M.A.T. No. 476 of 2004 and W.P. No. 29805 (W) of 1997

Ramkrishna Mission Vivekananda Centenary College and
Others

APPELLANT

Vs

Dr. Santideb Ghosh and Others

RESPONDENT

Date of Decision : 21-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 26, 30(1)

Citation : (2005) 1 CALLT 176 : (2005) 2 CHN 371

Hon'ble Judges : Barin Ghosh, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : P.S. Deb Barman, Pulak Chandra Mondal and Bandana Das, Saktinath Mukherjee, Sadananda Ganguly, Gopal Chandra Ghosh and A.K. Samanta, for the Appellant; Dipankar Datta, B. Bhattacharyya for the Respondent Nos. 16 and 17, University of Calcutta and Sardar Amjad Ali and Karabi Ghosh, for the Respondent

Judgement

Alok Kumar Basu, J.—The specter of controversy over the special status enjoyed by the Ramkrishna Mission Vivekananda Centenary College at Rahara (to be referred hereinafter as the College) since its inception, is still haunting the College, as it is evident from the Writ Petition No. 29805(W) of 1997 filed by the teachers of the said College against the College Authority and the resultant writ appeal thereof preferred by the College Authority which is now before us for disposal along with the stay petition.

2. The petitioners contended in the writ petition that since 1980. the College Authority in the name of claiming special status for the College is openly flouting the Acts made by the State, namely, the West Bengal Act of 1975 which for securing service protection for the College teachers and the West Bengal Act of 1978 which prescribed the procedure for selecting College teachers including that of the Post of Principal by College Service Commission. The petitioners have stated that there is no dispute over the fact that the College is a fully Government sponsored College and it has been receiving government aid for its

day-to-day management and also for its development programme. The petitioners submit that although there is specific mandate of the State Government for constitution of governing body of Government sponsored Colleges as contained in Government Memo dated 18th April, 1978, the College Authority is being run by a specially constituted governing body with one of the Monks of the Ramkrishna Mission as head of the executive wing of the College holding the post of Principal. The petitioners contend that as per provisions laid down in the Act of 1975 and also in the Act of 1978, the post of Principal is to be selected by the College Service Commission on receipt of requisition from the concerned College and there is no scope for appointing any other person as Principal of the College by-passing the said statutory mandate. The petitioners contend that as per provisions of the Calcutta University First Statute 1979 (since amended), there cannot be a vacancy of the post of Principal for indefinite period and to meet the exigency it has been provided in Section 101(B) of the said statute that the senior most teacher of the College shall be appointed teacher-In-charge till a regular incumbent for the post of Principal is selected by the College Service Commission.

3. It is the clear case of the writ petitioners that since one Sibamayananda, a Monk Principal of the College resigned from his post, no attempt was made by the College Authority to fill up the post of the Principal through College Service Commission and instead another Monk of the Ramkrishna Mission was appointed as Principal by-passing the provisions of the Act of 1975 and the Act of 1978 and the College Authority also ignored the claim of one of the petitioners to the post of teacher-in-charge being the senior most teacher in utter violation of the provisions of Calcutta University First Statute, 1979. The petitioners contend that when their grievance made before the appropriate authority went unheeded, they have been compelled to file the writ petition with the reliefs of issuance for appropriate writs so that senior most member of the teaching staff may be appointed as teacher-In-charge till the post of Principal is filled up by a regular incumbent selected the College Service Commission as per the provisions of the Act of 1978. The petitioners have also prayed for appropriate writ for removal of the present Monk Principal so as to pave the way for implementation of the provisions of the Act of 1975 and the Act of 1978 and also the Calcutta University First Statute, 1979.

4. Before the learned single Judge, the College Authority, namely, the representatives of the Ramkrishna Mission took up the plea that present writ petitioners had no locus standi to file the writ petition and none of the writ petitioners was entitled to lodge any claim for the post of Principal. The Mission Authority also sought to highlight before the learned single Judge that in view of the pronouncement of the Apex Court in the of Bramchari Sidheswar Shai and others etc. Vs. State of West Bengal etc., , the College has been exempted from the operation of the Act of 1975 and the Act of 1978 and in view of that matter, there cannot be any obligation for implementation of any provision of the Calcutta University First Statute, 1979 in the case of this College.

5. The writ petitioners mainly reiterated their points taken in the writ petition before the learned single Judge and it was specifically contended on behalf of the writ petitioners before the learned single Judge that since the Apex Court's pronouncement in the case of *Bramchari Sidheswar Sahai* (supra) that Ramkrishna Mission is not a religious minority and therefore, not entitled to the constitutional protection as envisaged in Article 30(1), the College Authority is legally bound to implement the provisions of the Act of 1975 and the Act of 1978 and Calcutta University First Statute, 1979 since there is nothing in those Acts and Statute exempting the College from the provision of those Acts and Statute. The learned advocate appearing for the writ petitioners submitted before the learned single Judge that both in the Act of 1975 and the Act of 1978 it was specifically provided that those Acts would not apply in case of those educational institutions which are entitled to get protection under Article 30(1) of the Constitution.

6. The learned single Judge having regard to the materials placed before him and after considering submissions of the writ petitioners and the Mission Authority and also the State, came to the conclusion that since the pronouncement of the judgment of the Apex Court in the case of *Bramchari Sidheswar Sahai* (supra), there is no defence available to the College Authority to refuse implementation of the provisions of the Act of 1975 and the Act of 1978 or the Calcutta University First Statute, 1979 since it is undisputed that the College is a fully Government sponsored College and the same is affiliated with the University of Calcutta. Upon the above observation, the learned single Judge allowed the writ petition and directed issuance of appropriate writs for removal of the present Principal of the College and also for appointment of the senior most member of the teaching staff as teacher-in-charge on temporary basis till a permanent Principal is appointed by the College Service Commission.

7. Being aggrieved by and dissatisfied with the judgment of the learned single Judge passed in connection with the aforementioned writ petition, the Mission Authority has preferred the present appeal and also filed a petition for an order of stay of the operation of the judgment till the disposal of the appeal and with the consent of the contesting parties we decided to take up both appeal as well as the stay petition for disposal for the sake of convenience and brevity.

8. Mr. Mukherjee appearing for the appellant petitioners submits that since inception of the College, the Government of West Bengal on the basis of an agreement with the Mission Authority gave special permission to the Mission for constitution of a governing body whereby the Mission was given full liberty to exercise administrative control over the academic matter pertaining to the College. Mr. Mukherjee submits that the teachers of the College since 1980 have been agitating over the special status granted in favour of the College in the matter of its governance and also in the matter of its special status for having a Monk Principal at the helm of the affair for maintenance of the special standard of the Institution. Mr. Mukherjee submits that the teachers as early in 1980 filed

a writ petition being CO. 12837(W) 1980 in this High Court claiming almost self same reliefs as mentioned in the present petition and it is pertinent to mention that some of the present petitioners also joined in the earlier writ petition claiming reliefs against the College Authority. Mr. Mukherjee submits that before the trial Judge in connection with the earlier writ petition. Mission Authority claimed protection under Article 30(1) and also under Article 26 of the Constitution and the trial Judge granted the protection under Article 30(1) of the Constitution, but, declined to extend the benefit of protection as envisaged under Article 26 of the Constitution to the College. An appeal was preferred and the Division Bench of this High Court granted both the reliefs to the College Authority and it is significant to note that both the learned single Judge as well as the Division Bench of this High Court refused to allow any relief to the writ petitioner. Finally, several appeals were preferred against the judgment of the Division Bench before the Apex Court and with the permission of Apex Court several persons and institutions were also added to the proceeding of the appeal before the Supreme Court and the Supreme Court by its Judgment reported in AIR 1995 2089 ultimately held that Ramkrishna Mission cannot be considered to be a religious minority and the question whether by establishing an institution for general education, Ramkrishna Mission was entitled to get protection under Article 26 was not an issue relevant for the purpose and finally decided that as the Government of West Bengal since inception of the College accorded special status to the College in the matter of its governance by the Mission and since the State of West Bengal on the basis of its office memo dated 18th April, 1978 exempted the Mission from the provisions of the Act of 1975 and the Act of 1978, it would not be fit and proper to ask the Government to implement the provisions of those Acts in the case of the College until and unless the State Government itself would come forward for change of the system on being satisfied with the objective condition and also for the interest of the students, teachers and employees of the College.

9. Mr. Mukherjee submits that pronouncement of the Apex Court in the abovementioned case is the law of the land under Article 141 of the Constitution and it is significant to note that since the pronouncement of the Judgment, the Government of West Bengal has been issuing office memo time to time following the same pattern as contained in the office memo dated 18th April, 1978 and even by the recent letter of the director of Public Instruction, Government of West Bengal dated 30th April, 2004 the College Authority has been permitted to constitute a special governing body with Monk as its Principal. Mr. Mukherjee submits that the entire approach of the learned single Judge has been wrong inasmuch as the learned Judge was impressed with the submissions of the writ petitioners that since the College is not established by a religious minority, there is no scope for the College Authority to avoid implementation of the Act of 1975 and the Act of 1978 or the Calcutta University First Statute, 1979, and the learned Judge failed to consider the impact of the judgment of the Apex Court which clearly laid down that the State of West Bengal gave a special status to the

said College and thereby exempted it from the obligation of those Acts and hence, there was no requirement to refer to the exempting clause of those Acts. Mr. Mukherjee, therefore, submits that the writ petition having no merit in the view of the clear pronouncement of the Apex Court, the same should be rejected and the appeal in question should be allowed to honour the pronouncement of the Apex Court. Mr. Mukherjee also submits that the judgment of the Apex Court is not only the law of the land, but, at the same time is binding precedent inter se the same class of litigants and as such cannot be reopened on the self same grounds.

10. Mr. Ali appearing for the writ petitioner-respondents has strongly controverted the submissions of Mr. Mukherjee contending inter alia that the learned Judge made proper appreciation of the judgment and order of the Apex Court rendered in the case of Bramchari Sidheswar Sahai (supra) and hence, there is no scope to interfere with the judgment and order of the learned single Judge and there is, accordingly, no merit In the present appeal.

11. Mr. Ali contends that on close examination of the judgment of the Apex Court it would appear that it was never an issue before the Apex Court nor before the trial Court or the Division Bench of the High Court whether the College Authority ignored and flouted the provisions of the Act of 1975 and the Act of 1978 in the matter of appointment of Principal through College Service Commission and it was also never an issue whether the senior most teacher is entitled to be appointed as teacher-in-charge as per the provisions of the Calcutta University First Statute, 1979. Mr. Ali contends that before the Apex Court the issue was relating to the formation of the governing body of the College and nothing else.

12. Mr. Ali submits that there is no scope of denial of the factual position that the College was established with the grant received from the State Government and the College is being run with the grant of the State Government and the College is a fully Government sponsored College and it is affiliated to the University of Calcutta. Mr. Ali contends that for proper management of Government sponsored Colleges and also for protecting the interest of the teaching and non-teaching staff attached to those Colleges, the Government of West Bengal has enacted two legislations namely, the Act of 1975 and the Act of 1978. Mr. Ali that while The Act of 1975 deals with the security aspect of the teaching and non-teaching staff of Government sponsored Colleges, the Act of 1978 is for selection of teachers of Government sponsored Colleges including the post of Principal through College Service Commission. Mr. Ali contends that it has been the experience of the University, which owes duties and obligations to the Government sponsored Colleges, that delay takes place in the matter of filling up of posts post of Principal in those Colleges and this prompted the University to come forward with the Calcutta University First Statute, 1979 and it has been provided in the said statute that there should not be unusual delay in filling up of the post of Principal and in case when immediate steps are not possible to be taken to fill up such post, the senior most teacher should be appointed as

teacher-in-charge to look after the statutory functions of a Principal till a regular Principal is appointed by the College Service Commission.

13. Mr. Ali contends that the prayers of the present writ petitioners are very simple and without any malice, they only wanted the implementation of the provisions of the Act of 1975 and the Act of 1978 and the Calcutta University First Statute, 1979 so that for the best interest of the College, the post of Principal is filled up by the College Service Commission and till that is done, the senior most member of the leaching staff should be appointed as teacher-in-charge to look after the day to day administration of the College.

14. Mr. Ali contends that the College Authority resisted the claim and prayer of the writ petitioners without any logic or rhyme and out of ego and with a sense of loosing power and control, the College Authority by-passing the statutory mandate has filled up the post of Principal in a quite arbitrary manner and thereby the legitimate right of the writ petitioners were ignored.

15. Mr. Ali contends that the pronouncement of the Apex Court rendered in the case of Bramchari Sidheswar Sahai (supra) would be of no help to the appellant-petitioners since the ratio of the decision of that case does not help the appellant, rather, the ratio of the decision upholds the legitimate claim of the writ petitioners-respondents.

16. Mr. Ali contends that there is no denying of the legal proposition that a pronouncement of the Apex Court would get the recognition of law and would be binding upon all Courts of the land under Article 141 of the Constitution, but, Mr. Ali submits that before applying a ratio of a decision rendered in a particular case necessary efforts must be made to ascertain what were the issues before the Apex Court and what was the ratio of the decision rendered in that perspective and unless the Apex Court decides the matter in the background of issues raised by the rival parties, there is no scope to make any inference or deduction from the decision of the Apex Court and to avail of the same to suit one's requirement.

17. Mr. Ali substantiate his point has referred to the decisions reported in Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, (head note "B" and paragraph 7), Alpine Industries Vs. Collector of Central Excise, New Delhi, and also Suganthi Suresh Kumar Vs. Jagdeeshan, .

18. Mr. Ali submits that in the case of Bramchari Sidheswar Shai (supra), the Apex Court held, inter alia, that Ramkrishna Mission is not a religious minority and the Court also declined to give its approval to the finding of the Division Bench of the Calcutta High Court that Ramkrishna Mission was entitled to have the benefit of Article 26 even for establishing an institution for general education. Mr. Ali submits that the entire defence of the Mission Authority has been their claim of protection under the Constitution as religious minority or in the alternative extension of the benefit as provided in Article 26 to the institution for general education and when both the claims were turned down by the Apex Court in the above mentioned case, the College Authority and for that matter the

Mission Authority has no defence at all to avoid implementation of the Act of 1975 and the Act of 1978 or the Calcutta University First Statute, 1979.

19. Mr. Ali finally submits with reference to a judgment of the Hon''ble Supreme Court as reported in 2003(6) page 697 at page 713 that the Hon''ble Court has made a distinction between permissible and impermissible regulation in the matter of general education and its governance and the Apex Court has expressed its view that there cannot be any legal bar for application of the permissible regulation even in the case of private educational institution for the best interest of the teachers and students. Mr. Ali submits that there is no challenge from any corner regarding any provision of the Act of 1975 and the Act of 1978 or the Calcutta University First Statute, 1979 and hence, there cannot be any objection from any corner regarding implementation of those Acts and Statute in the case of this College also. Mr. Ali would, therefore, submit for dismissal of both the appeal and the stay application.

20. Having regard to the submission made by Mr. Mukherjee on behalf of the appellant-petitioners and Mr. Ali on behalf of the respondent-writ petitioners and on close examination of the judgment and order of the learned single Judge impugned in this appeal, we are very much convinced that for proper adjudication of the present appeal and for setting at naught the roaving controversy arising between the parties, we must look into the judgment of the Hon''ble Court rendered in the case of Bramchari Sidheswar Shai (supra) as it is very much evident both from the impugned judgment and order and also from the submissions of the learned advocates of the contesting parties that attempt has been made to interpret the said judgment of the Apex Court in aid of the judgment and order of the learned single Judge as also to substantiate the contention of the rival parties.

21. On examination of the Judgment of the Hon''ble Court rendered in the case of Bramchari Sidheswar Shai (supra), it is found from paragraphs 3 to 9 of the said judgment that the Hon''ble Court was pleased to give a brief background of facts leading to filing of the Writ Petition No. 12837 (W) of 1980 by the teachers of the College. The Hon''ble Court at paragraph 6 of the said judgment mentioned the prayers made by the writ petitioners which were as follows:

(i) "a writ in the nature of mandamus commanding the Government of West Bengal to reconstitute the Governing Body of the Ramkrishna Mission College according to standard pattern for Governing Bodies of sponsored Colleges as per Government Memo No. 752-Edn (CS)/C.S. 30-3/77 dated 18th April, 1978;

(ii) a writ declaring that the Ramkrishna Mission College is governed by W.B. Act of 1975 and W.B. Act of 1978;

(iii) a writ in the nature of quo warranto restraining Swami Shivmoyananda as Principal of Ramkrishna Mission College, and other incidents writs."

22. From paragraph 8 of the judgment it appears that the College Authority also

received notice from the Calcutta University for reconstitution of its Governing Body and the College Authority also challenged legality of such notice in the pending writ petition by filing an inter locutory application. The writ petition filed by the teachers of the College was dismissed by the learned single Judge of this High Court and the said judgment of the learned single Judge was subsequently upheld by the Division Bench of this High Court and ultimately the writ petitioners as well as other parties being aggrieved by and dissatisfied with the findings of the Division Bench of this High Court approached the Hon''ble Court resulting delivery of the judgment under consideration.

23. It is pertinent to mention in this context that on examination of the prayer portions of the present writ petition it would appear that prayers of the present petition are almost akin to those of the earlier writ petition of CO. No. 12837(W) of 1980 and it is further noticed that prayers of the present writ petition have been couched in somewhat different language to serve the purpose of the present writ petitioners some of whom had also the privilege of filing earlier writ petition.

24. The Hon''ble Court in paragraph 12 of its judgment had set out six questions to resolve the dispute centering around the College and for our benefit all the six questions are reproduced herein below:

1. Can the citizens of India residing in the State of West Bengal who are professing or propagating the religious doctrines and teachings of Ramkrishna and have become his followers, claim to belong to a minority based on Ramkrishna religion which was distinct and different from Hindu religion and as such entitled to the fundamental right under Article 30(1) of the Constitution of India, of establishing and administering educational institutions of their choice through Ramkrishna Mission or its branches in that State?

2. Do persons belonging to or owing allegiance to Ramkrishna Mission belong to a religious denomination or any section thereof as would entitle them to claim the fundamental rights conferred on either of them under Article 26 of the Constitution of India?

3. If persons belonging to or owing allegiance to Ramkrishna Mission is a religious denomination or a section thereof, have they the fundamental right of establishing and maintaining institutions for a charitable purpose under Article 26(a) of the Constitution of India.

4. If Ramkrishna Mission has a religious denomination or a section thereof establishes and maintains educational institutions, can such institutions be regarded as institutions established and maintained for charitable purpose within the meaning of Article 26(a) of the Constitution of India?

5. Is Ramkrishna Mission College at Rahara established and maintained by Ramkrishna Mission and if so, will the Constitution of its governing body by the Government of West Bengal amounts to infringement of Ramkrishna Mission''s

fundamental right establish and maintain an educational Institution under Article 26(a) of the Constitution of India?

6. Can the Court direct the West Bengal Government because of W.B. Act, 1975 and W.B. Act, 1978, to constitute governing body on standard pattern of sponsored College envisaged under its Memo dated 18th April, 1978 in respect of Ramkrishna Mission College when that memo itself says that College established and maintained by Missions on the basis of agreement cannot be treated as sponsored Colleges for the purpose of constituting governing body for them on a standard pattern.

24. The Hon''ble Court after making elaborate discussions from paragraph 13 to paragraph 45 of the judgment observed in paragraph 46 that Ramkrishna Mission cannot be considered to be a minority religion and hence, the educational institution established by Ramkrishna Mission are not entitled to the benefit under Article 30(1) of the Constitution. The Hon''ble Court in paragraph 52 of the judgment observed that Ramkrishna Mission or Ramkrishna Math belong to the religious denomination within Hindu religion or a section thereof as would entitle them to claim the fundamental rights conferred on either of them under Article 26 of the Constitution. The Hon''ble Court thus answered point No. 1 in the negative and point Nos. 2 and 3 in the affirmative.

25. As regards the point Nos. 4 and 5 the Hon''ble Court at paragraph 58 of the judgment observed that the question No. 4 was not germane before the Division Bench of the High Court and the issue relating to that question ought to be treated as non-est and the question is left open to be decided in proper case where such question would really arise and all the parties who might be concerned with it should be afforded adequate opportunity to have their say in the matter.

26. The answer as to question No. 6 given by the Hon''ble Court in the said reported judgment is very much relevant for our present purpose. The Hon''ble Court at the initial stage of discussion at paragraph 2 of the Judgment has recorded the brief background behind establishment of Ramkrishna Mission Vivekananda Centenary College at Rahara. The Hon''ble Court has recorded how by a letter dated 19th July, 1961 the Government of West Bengal through its Secretary, Education Department approached the Ramkrishna Mission for establishment of a College in commemoration of the birth centenary of Swami Vivekananda and the Hon''ble Court further recorded how such proposal was translated into action and finally, the Hon''ble Court mentioned the memo dated 18th April, 1978 issued by the Deputy Secretary, Government of West Bengal clearly stating the feeling of the Government to give a special status to the College exempting it from the obligation of forming governing body like other Government sponsored Colleges. The Hon''ble Court in paragraph 59 of its judgment has reproduced the Government memo dated 18th April, 1978 and at paragraph 60 of the said judgment, the Hon''ble Court made it clear that when the State Government has exempted the Ramkrishna Mission College, Rahara in

the matter of constitution of a governing body on a standard pattern, it would be just for the Court to direct the State Government for making a deviation from its stand and to insist in the matter of implementation of West Bengal The Act of 1975 and the West Bengal The Act of 1978. The Hon''ble Court made it clear that this observation of the Court shall not come in the way of the State Government to change their earlier arrangement with the Ramkrishna Mission in the matter of governance of the Ramkrishna Mission College, if on objective considerations such change becomes necessary in the larger interest of students and teachers and other employees of that College and is so permitted by law.

27. In paragraph 62 of the judgment, the Hon''ble Court concluded that the appeals preferred stood dismissed by setting aside the holding of the learned single Judge as upheld by the Division Bench of the High Court that Ramkrishna religion being a religion distinct and separate from Hindu religion was a minority in West Bengal based on religion entitled to protection under Article 30(1) of the Constitution of India and also setting aside the holding of the Division Bench of the High Court that Ramkrishna Mission as a religious denomination was entitled to establish and maintain institutions of general education under Article 26(a) of the Constitution of India as those established and maintained for a charitable purpose. In paragraph 61 of the judgment the Hon''ble Court clearly decided that having regard to the special background of the College and having regard to the special status accorded to the College by the State of West Bengal, there is no need of directing the West Bengal to take recourse to the provisions of the Act of 1975 and the Act of 1978 in the matter of forming governing body.

28. Thus, from the questions raised by the Hon''ble Court and the answers given to each of them by the Hon''ble Court as indicated above. We are fully convinced that although the Hon''ble Court declined to give protection of Article 30(1) or protection u/s 26(a) of the Constitution to the Ramkrishna Mission and the College established by it, the Court certainly decided in a most assertive manner that having regard to the background of the establishment of the College and having regard to the stand taken by the Government of West Bengal since inception of the College in the matter of its governance and management with special reference to office memo dated 18th April, 1978, there is no need to ask for implementation of the provisions of the Act of 1975 or the Act of 1978.

29. Mr. Ali has raised a question that the issue before the Apex Court was regarding the governing body of the College, but, we are unable to accept that contention simply because by forming the governing body of the College, the Government allowed the College to have a Monk as a Principal and it is to be presumed from this particular intention of Government that the Government was very much aware of the fact that in the matter of this College the general procedure for selection of Principal through a College Service Commission shall not be made applicable. Once we reach this conclusion the natural consequence follows that there would be no obligation under the provisions of Calcutta University First Statute aimed at filling up of temporary vacancy of the post of

Principal like other Government sponsored Colleges.

30. After close examination of the judgment of the Apex Court rendered in the case of Bramchari Sidheswar Shai (supra), we are seriously contemplating whether the present writ petition at all was maintainable before the learned single Judge as the parties of the present writ petition are almost identical of the previous writ petition and almost same issues as raised in the present petition were matter of consideration before the Apex Court and further we are of the view that following the long established principle of judicial discipline and binding precedent, it was not at all permissible to make any departure from the conclusion reached by the Apex Court which has a binding effect upon the writ petitioners who were parties to the earlier adjudication and that apart, the present writ petition is also barred under the principle of res Judicata.

31. Thus, having regard to the submission of contesting parties and on examination of the materials placed before us, we are of firm view that following the Judgment of the Apex Court rendered in the case of Bramchari Sidheswar Shai (supra), and in view of the recent office memo of the Government of West Bengal dated 30th April, 2004 it was not permissible to reopen the issue once again and to issue any writ dishonouring the mandate of the Apex Court when admittedly the State Government has not deviated from its earlier stand relating to the special status accorded to the College. We therefore, find sufficient merit in the present appeal and in the stay petition and we are inclined to allow the both.

32. Accordingly, both the appeal and the stay petition are allowed resulting in dismissal of the writ petition and setting aside the judgment and order of the learned single Judge delivered in connection with Writ Petition No. 29805(W) of 1997. We, however, make no order as to costs Considering the facts and circumstances of the case.

Stay as prayed for against the judgment is considered and rejected.

Urgent xerox certified copy of this judgment, if applied for, may be supplied after complying with all necessary formalities.

Barin Ghosh, J.

33. I agree.