
(2018) 05 CAL CK 0173
In the Calcutta High Court
Case No : Writ Petition1287 (W) of 2018

Sekh Rafikulla

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 11-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 12

Citation : (2018) 05 CAL CK 0173

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Bhagbat Chowdhury, Sariful Islam Mallick, Trapada Halder, Mitali Bhattacharjee, Shamim ul Bari

Final Decision : Disposed Of

Judgement

At the outset a preliminary point is raised on behalf of respondent no.2. Learned advocate for respondent no.2 submits that the State of West Bengal

has been made a party through the Secretary, Department of School Education and not the Secretary of the Minority Affairs & Madrasha Education,

Government of West Bengal.Â He submits that in view of Rule 24 of the Writ Rules of this Court, every writ petition must show, where the State is a

party, through which officer of the State it is to be served a copy of the writ petition.Â He submits that it is not a mere technicality because according

to the Rules of Business and scheme of things though the government is one (like God) there are several departments under several respective

secretaries who are heads of the department and through whom decisions are taken.Â

He submits that in terms of the report of the District Level Inspection Team at page 55 of the writ petition, that in terms of Regulation 6(1) and Form

2 copies are to be sent to the Director of Madrasa Education, Department of Minority Affairs and Madrasa Education, Government of West

Bengal, and the Board simultaneously. He further submits that if the Department of Minority Affairs and Madrasa Education are required by

statutory regulations to be served a copy of such report simultaneously with the other two authorities then if the writ petitioner does not make the State

of West Bengal a respondent through the Secretary of that department, it is a case of non-joinder of a necessary party. He also submits that in the

absence of such person as a respondent, the writ petition is perhaps not properly framed and may, therefore, fail for wholly technical reasons.

To my mind the State of West Bengal is one indivisible and indispensable. Departments are created for administrative convenience. The Secretary

of a Department of West Bengal is an instrumentality, officer or authority of the State and "State" under Article 12 of the Constitution of India

comprises all its departments. This is therefore, at best a failure to completely and correctly describe a necessary party which is a wholly curable

defect and can be cured by merely allowing leave to correct the cause title. This is especially so at the admission stage of the writ petition.

Accordingly, Mr. Chowdhury's client is given liberty to add the Secretary, Department of Minority Affairs and Madrasa Education, Government of

West Bengal, H.R.B.C. Building, Nabanna, 325 Sarat Chatterjee Road, Shibpur, Howrah 711102, in that name and style as a party respondent

herein. Mr. Bhattacharya is good enough to accept service for the added respondent. It appears from the writ petition that the DLIT though

perhaps not constituted strictly in accordance with law did inspect the Madrasa for the purposes of recognition and recommended that its recognition

be approved. The grievance of the writ petitioner is that without assigning any reason no action has been taken on such recommendation.

Since the respondents are all represented today, I feel it is not necessary to keep the matter lingering or call for affidavits. Certainly, the writ

petitioner is entitled to know the fate of his application for recognition. Therefore, the respondent no.5 is directed to consider the report of the DLIT

appearing at page 55 of the recognition made at page 70 and all other relevant facts and in its discretion either direct that a fresh inspection be held by

a lawfully constituted District Level Inspection Team and then take a reasoned decision to approve or not approve such recognition, or for reasons to

be recorded in writing, rely upon the present report and take a decision whether or not to recognize the Madrasha in question.Â The discretion which alternative is to be followed, is left entirely to the respondent No. 5.Â However, if it chooses to rely upon the present report, without calling for a fresh report by a reconstituted District Level Inspection Team, it shall not be open to him to reject the report on the ground that it was by the team which inspected the Madrasha or on the basis of its membership.

The entire exercise should be completed within a period of four months from the date of communication of this order and it shall be communicated to the writ petitioner within a period of a fortnight thereafter.Â I make it clear that I have not gone into the merits of this case.Â The respondent No. 5 is not required to any further opportunity of being heard to the writ petitioners in case of either of the alternatives. It is needless to mention that he shall act in accordance with law. The writ petition is disposed of. There will be no order as to costs. Since this writ petition is being disposed of without calling for affidavits, allegations made in the writ petition are deemed not to have been admitted.