

(1999) 09 CAL CK 0010
In the Calcutta High Court
Case No : M.A.T. No. 191 of 1998

State of West Bengal and Others

APPELLANT

Vs

Abdul Kuddus and Others

RESPONDENT

Date of Decision : 09-09-1999

Acts Referred:

Constitution of India, 1950 — Article 162, 166(3), 226

Citation : AIR 2000 Cal 73

Hon'ble Judges : Satya Barata Sinha, Acting C.J.; M.H.S. Ansari, J

Bench : Division Bench

Advocate : D.K. Samanath, for the Appellant; Jayanta Kumar Biswas, Ashraful Huq, Jakir Hossain and Sarat Kumar Dutta, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, Ag. C.J.

1. This appeal is directed against a judgment and order dated 7.11.97 passed by a learned single Judge of this Court whereby and where under the writ petition filed by the writ petitioners claiming, inter alia, the following reliefs:

"a) For a writ of or in the nature of Mandamus commanding the respondents, their subordinates or agents to cancel, reject, withdraw or rescind from the impugned order dated 15.12.94 passed by the Assistant Secretary to the Government of West Bengal, Annexure "H" to the writ application rejecting the proposal for recognition of the proposed Kumarganj Junior High School, Kumarganj, Malda, and to give recognition to the said Junior High School without any delay.

b) For a writ of or in the nature of Mandamus directing the Secretary, West Bengal Board of Secondary Education to accord recognition to Kumarganj Junior High School from V to VIII Class out of 16 quotas of Malda District, at an early date, was allowed."

2. The basic fact of the matter is not in dispute.

3. A school by the name of Kumarganj Junior High School was established at Village Kumarganj in the District of Malda as far back in the year 1984. Since then, the authorities of the school had been filing representations for recognition of the said school. Admittedly, an inspection was made by the District Level Inspection Team on or about 12.4.94. In the said inspection, the roll strength of students was recorded as follows:

Boys Total Girls Total

General + SC + ST General + SC + ST

1991-92 42 + 5 + x = 47 41 + 6 + 47

1992-93 45 + 9 + x = 54 56 + 12 + 68

1993-94 56 + 10 + x = 66 56 + 11 + 67

Number of students present on the date of inspection :--

12-4-1994 V Boys ___ 21 Girls ___ 14 = 35

VI " 6 " 23 = 29

VII " 14 " 9 = 23

VIII " 17 " 6 = 23

4. In the said report, it had been further stated that there were 7 teaching and 2 non-teaching staff. The said report revealed that there are 8 primary schools which are within the range of 2 to 3 Kms. and whose requirements are fulfilled by the school in question.

5. The writ petitioners had filed writ petition before this Court, as earlier their application for grant of recognition had not been considered for a long time. Pursuant to or in furtherance of the direction made by this Court, an order dated 15.12.1994 as contained in annexure "H1 to the writ application was passed in terms whereof the writ petitioners' representation for grant of recognition of the said school was rejected stating:

This school was established in 1984 without prior permission from the Government or Board. Enrolment of the school is not satisfactory."

6. Before the learned trial Judge, admittedly no affidavit in opposition was filed. Statements made in the writ application were, therefore, not controverted. The learned trial Judge after having considered the entire fact came to the conclusion that the school in question fulfils the criteria for recognition. The learned trial Judge further took into consideration the fact that the schools similarly situated and which had been established after 26.4.78 had been granted recognition. In the aforementioned situation, the learned trial Judge directed: "In the circumstances ultimately the question that poses before this Court is whether the

communication of the Assistant Secretary to the Government of West Bengal dated 15.12.94 and the subsequent decision of the Board of Secondary Education as communicated by the annexure-I should be allowed to stand. Since I have shown that the relevant school fulfils all the requirements of recognition excepting that it came into existence spontaneously due to the exigency of the situation and due to the utmost effort of inhabitants of the locality, must get its due recognition from the Board of Secondary Education"

7. Mr. Dilip Kumar Samanta, learned counsel appearing on behalf of the appellants has raised a short question in support of this appeal. Learned counsel has taken us through the circular letter bearing No. 553-Edn (s) dated 26th April 1978, and submitted on the basis thereof that as Special Secretary to the Government of West Bengal had issued a circular stating:

"(e) Organisations of spontaneous and Voluntary schools should from now on, be discouraged. Schools may be started only under instructions from the Government or the Board,"

the said school was not entitled to recognition.

8. The submission of Mr. Samanta is that although mistakes might have been committed in relation to other schools by granting recognition, the learned trial Judge ought not to have taken the said fact into consideration, as mistakes should not be allowed to be perpetrated.

9. Mr. Jayanta Kumar Biswas, learned counsel appearing on behalf of the writ petitioners/respondents on the other hand submitted that the order impugned in the writ application was absolutely vague. According to the learned counsel, the said purported circular letter dated 26.4.78 does not have the force of law. Learned counsel submitted that recognition has to be granted keeping in view the provision of Article 41 of the Constitution. Our attention has been drawn to the fact that the Board of Secondary Education has itself issued a circular letter dated 25.5.53 in terms where of roll strength in a 4th Class Junior High School for recognition should be 120 only, and as the school in question admittedly exceeds the said roll strength, the impugned order must have been passed on extraneous consideration.

10. So far as the circular letter dated 26.4.78 is concerned evidently the same was not issued by the State in exercise of its power conferred upon it under Article 162 of the Constitution of India. The matter relating to regulation of education in the State of West Bengal is governed by a statute known as West Bengal Board of Secondary Education Act, 1963. The said Act nor the Rules framed thereunder provide for grant of recognition of schools, nor provide for the modes and manner which are required to be followed for such grant. The circular letter dated 26.4.78 prima facie does not satisfy the requirement of Article 162 of the Constitution of India. The said circular letter also has not been authenticated in terms of Clause (3) of Article 166 of the Constitution of India. Even assuming that the said circular letter should ordinarily be followed, a bare

perusal thereof would make it clear that thereby merely establishment of school has been discouraged. The said circular letter does not provide for any consequence in relation to any school which might have been started without obtaining any permission from the Government or the Board. No procedure has been laid down in the said circular as to how and in what manner such permissions are to be obtained. In terms of the provisions of the West Bengal Board of Secondary Education Act, 1963, State has taken over the control in respect of the secondary schools. The West Bengal Board of Secondary Education having been created under the said Act, specific power had been delegated to it only in terms of the said statute, and thus, in our opinion, vague instructions could not have been issued that permission to start a school should be obtained either from the Government or the Board. In any event, as no consequence for non-observance thereof had been provided for, such a provision does not appear to be a mandatory one. The very fact that the State Government and/or the Board, in similar situation, had granted recognition to other schools, also is a pointer to the fact that the State Government or the Board had not considered the said provision to be mandatory in nature.

11. It may be true, as was submitted by Mr. Samanta, that in law, a mistake committed in relation to one school, should not be allowed to be perpetrated, but the said proposition of law is not absolute in terms. Only when a mistake is committed in relation to a matter, which is governed by law, the court cannot issue a similar direction on the ground that there were any other persons who derived any legal right to maintain a writ application relying on or on the basis of such mistake alone. Such is not the position here. Furthermore, as indicated hereinbefore, the school satisfies the condition as regards the strength of the students. It is not in dispute that the school in question fulfils the other criteria. The findings of the learned trial Judge to that effect had not been questioned before us.

12. For the reasons aforementioned, we do not find any infirmity in the order passed by the learned trial Judge. In the result, there is no merit in this appeal, which is accordingly dismissed. There will be no order as to costs. Time for grant of formal recognition of the school in question is extended till 3 months from date.

13. Xerox certified copy of the order be supplied on priority basis.

M.H.S. Ansari, J.

14. I agree.