
(2002) 12 CAL CK 0024
In the Calcutta High Court
Case No : Writ Petition No. 21291 (W) of 2000

Uttara Chowdhury

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Board of Secondary Education Act, 1963 — Section 19(3), 19A(3)

Citation : (2003) 1 ILR (Cal) 14

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Asok De and S. Khondekar, for the Appellant; Kallol Basu, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.

This writ application has been filed by the members of the Managing Committee of Mother Centenary Institute hereinafter for brevity refer to as Managing Committee of concerned school, praying following reliefs:

a) Writ in the nature of Mandamus commanding the Respondent, particularly the D.I. of School (S.E.) Nadia to cause a D.L.I.T. inspection in Mother Centenary Institution as X class High School immediately and to take necessary steps for recognition of the said school as also to approve the teaching and non-teaching staff of the said school;

b) Writ in the nature of Mandamus, commanding the Respondent particularly the President/Secretary, West Bengal Board of Secondary Education to allow the student of class X of the said school to appear at the Madhyamik Final Examination as external candidate on regular syllabus;

c) Writ in the nature of Certiorari calling upon the Respondent to produce and/or to transmit all the relevant records, so that the conscionable justice may be

given.

2. By the order dated October 12, 2001, P.K. Chattapadhyay J.: directed the Respondents to file affidavit-in-opposition but no affidavit-in-opposition has been filed by the Respondents. In course of hearing, relying upon the records of the West Bengal Board of Secondary Education hereinafter refer to as said Board for brevity, it was submitted by the Respondent Board that by recent decision recognition of the school was refused by the Executive Committee, of the said Board. Direction was given for inspection of the records and to file a supplementary affidavit assailing the decision of the said Board. The writ Petitioners accordingly have filed supplementary affidavits assailing the refusal to recognize the school. The writ Petitioner filed two supplementary affidavits; one affirmed on August 12, 2002 annexing material documents in support of the writ application, another affirmed on September 17, 2002, assailing the decision of the West Bengal Board of Secondary Education refusing the prayer for recognition of the school. Matter was heard at length. Despite supplementary affidavits as filed, no opposition was filed by the Respondents. In view of the change circumstances, this writ application now centered round to the impugned decision of the Executive Committee of the said Board whereby prayer for recognition was refused. West Bengal Board of Secondary Education refused the prayer for recognition of the school in its meeting held on May 31, 2001 by taking as many as seven grounds. This decision was communicated to the Secretary of the Managing Committee of the concerned school by the communication of Secretary of the said Board dated June 8, 2001, which reads as follows:

I am directed to inform you that in compliance with the Hon'ble High Court order dated 7.10.99 passed in the matter referred to above the Recognition Committee considered in its meeting dated 31.5.2001 the views of the State Govt. vide memo No. 238-SSE/2001, dated 28.5.2001 and the D.L.I.T. report thereto u/s 19(3) of the Act, and

Resolved that the committee regrets its inability to recommend Mother Centenary Institute (Proposed), Nadia for recognition on the grounds mentioned below.:

1. The School claims to have been established in 1973. But they did not apply for recognition following the prescribed norms;
2. The land of the school was possessed by lease deed executed on 5.3.2001. So the date of establishment cannot be accepted. The school was established after 1988 in violation of Clause 2(a) of G.O. No. 553-Edn.(S), dated 26.4.1978;
3. The school opened classes IX & X in an irregular manner; and in violation of the prescribed norms;
4. Staff recruited without following prescribed rules;
5. Reserve Fund is inadequate;

6. D.L.I.T. did not find furniture in the class rooms;

7. Neither D.L.I.T. nor the State Govt. recommended for recognition;

The Executive Committee of the Board considered the above resolution of the Recognition Committee u/s 19A(3)(c)(i) of the Act, 1963, as amended, in its meeting dated 6.6.2001 and approved the same by rejecting the prayer for recognition of the said school.

3. The learned Advocate for the Petitioner has strongly urged that the school fulfilled all the materials as required for recognition of a school relying upon the inspection report of District Level Inspection Team dated February 12, 2001. It has been urged that the school got sufficient land under the lease agreement being 10 bighas in measurement, that the school situated in pucca buildings with 11 class rooms, one library room and one office room and that sanitary arrangements of the school are proper. It has been further submitted that there are as many as four feeder primary schools and nearby junior high school and/or high schools are situated at a distance of six to seven kilometers, which is not accessible for the students to complete their further education in secondary level. The teaching staffs are also well qualified. It has been strongly urged that the reason for non-recommending the school for recognition as taken by the District Level Inspection Team hereinafter refer to as D.L.I.T. for brevity, was not at all justified and reasons have no basis. It has been further urged that the Secondary, Education Department also did not apply his mind on the material points and as a result did not recommend to recognize the school on some flimsy grounds, which are not legally sustainable. It has been strongly urged that the many Scheduled Caste and Scheduled Tribes students are studying in the school and they would be deprived of benefit of secondary education, if school is not recognized. It is submitted that it is a fit case for the recognition of the school.

4. In the supplementary affidavit, the writ Petitioners have assailed the grounds for non-recognition of the school as taken by the said Board by giving details particulars in the supplementary affidavit affirmed on September 17, 2002. It is the case of the writ Petitioners that on October 2, 1972, the villagers had set up the school, the School Authority approached the Bangabani, a registered Society to allow their buildings and lands to run the school and by the agreement in the stamp paper on December 15, 1973, the authority of Bangabani allowed the School Authority to use their buildings and the lands for such purpose. The Bangabani, the organisation, accordingly allowed three buildings having five rooms each to utilize the same for the purpose of the school. The School Authority applied for recognition on January 4, 1973 by filling application to the District Inspector of Schools concerned and thereafter several reminders were filed on diverse dates namely on January 5, 1973, April 7, 1974, April 28, 1976 and March 11, 1978 praying recognition. The Bangabani in terms of their agreement dated December 15, 1973 ultimately executed and registered an indenture of lease on March 5, 2001 for nine hundred ninety nine years with effect from the year 1988. Since the school was not recognized, the writ

application was moved being W.P. 17210 (W) of 1999 praying for necessary direction for recognition of the school. In that writ application, State Respondents appeared. After hearing the parties Amitava Lala J. by the order dated October 7, 1999 disposed of the writ application in the following terms:

Let the affidavit of service filed in Court today be kept with the record.

This is a case for recognition of a school. The D.I.S. (SE) concerned is directed to get the concerned school inspected by the D.L.I. Team within a period of four weeks from the date communication of this order. The District Inspector of School (SE) concerned will forward the report of the 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 the Director of School Education, West Bengal shall forward the report and the necessary papers with his own comments thereon to the Education Dept. Government of West Bengal within four weeks from the date of receipt of the necessary papers from the D.I.S. (SE) concerned.

The Education Dept. 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 of the necessary papers from the Director of School Education. The West Bengal Board of Secondary Education shall then consider the question of according recognition to the concerned school and pass necessary orders in the manner within a period of six weeks from the date of receipt of the necessary papers from the Education Department.

Accordingly, the writ application is thus disposed of.

There will be no order as to costs.

Till completion of the process it is directed that the candidates will be given permission by the Court to appear as external candidate for the forthcoming examination.

Let urgent certified xerox copy of this order be handed over to the Id. Advocate for the Petitioner by 13.10.99 if the same is applied for.

5. Being aggrieved by the portion of the direction namely the status of the Madhyamik examinees as external candidates as was allowed by the Amitava Lala J., the writ Petitioners preferred an appeal being No. MAT 224/2000. In connection with this appeal, two applications were filed, one CAN 620/2000 praying for condonation of delay in preferring the appeal and another CAN 619/2000 praying for necessary interim orders. The appeal and both the said two applications were disposed of by a common order on February 15, 2000 by the Division Bench comprising of the Hon'ble The Chief Justice A.K. Mathur and S.B. Sinha J. (as His Lordship then was) by not interfering with the impugned direction about status of the school final examinees. However, the writ Petitioners moved another application being No. CAN 1451/2000 praying for modification of

the order of the Amitava Lala J. dated October 7, 1999 as passed in W.P. 17210 (W) of 1999. In this modification application, the Petitioners prayed for some relief for which appeal was preferred and this modification application was disposed of confirming the status of Madhyamik examinees as external candidate and granting permission to appear in the said examination, which reads thus:

W.P. 17210 (W) of 1999 -- Re.: CAN No. 1451 of 2000 In W.P. No. 17210 (W) of 1999.

In re.: Application for Modification filed on 21.2.2000

Debabrata Chakraborty ... Petitioner v. State of West Bengal and Ors.... Respondents. -- Mr. Debabrata Chakraborty ... Petitioner in person.

The matter being CAN No. 1451 of 2000 be treated as on day's list by which the Petitioner has come forward for modification of the order passed on October 7th 1999 without any explanation as to delay and with a plea that unless and until the order is modified or clarified by this Court, it would not be possible for the authority to allow them to sit in the examination and if the court allows such prayer the authority will do the needful. It appears to me that the order was passed i.e., in 7th October 1999 when this Court was pleased to direct that till the completion of the process of recognition of the institution, the candidate will be given permission by the court to appear as external candidates in the forthcoming examination. Now since the forth-coming examination is knocking at the door, the application stands allowed by condoning the delay and giving permission to appear as external candidates pursuant to the earlier order dated October 7, 1999. It has come to the knowledge of the court that an appeal was preferred from this order which was subsequently dismissed. Therefore, following the direction as given earlier in respect of giving permission to the students of the institution to appear as external candidates in the forth-coming examination of the Board, this application stand disposed of. Therefore will be no order as to costs.

Let the original writ application be brought up from the department and tagged the modification application to the record of this case.

Let a plain copy of this order duly countersigned by the A.R. (Court) be handed over to the Petitioner in person upon showing the requisite given for the purpose of certified copy to the officer of this Court.

Sd/- . Amitava Lata J.

6. On May 26, 2000 the District Inspector of Schools wrote a letter communicating his desire to inspect the school for recognition as junior High School fixing date of inspection on July 5, 2000. Being aggrieved by the decision of the District Inspector of Schools to inspect the school as junior high school, the writ application being No. W.P. 9896 (W) of 2000 was moved, when Altamas Kabir J. by the order dated July 10, 2000 directed the School Authority to make inspection of the school as high school. This writ application was, however,

dismissed subsequently by me by the order, dated July 4, 2002 on the ground of locus standi as the writ application was moved by teaching and non-teaching staff of the school praying for recognition. However, in terms of the order of Altamas Kabir J. District Inspector of Schools expressed his view to inspect the school for recognition as high school but verbally imposed a condition that the School Authority should submit an affidavit, contending, inter alia, that there were no organizing staff in the school. The School Authority was aggrieved by such suggestion of District Inspector of Schools concerned and accordingly took a decision on July 16, 2000 in their meeting against such suggestion. Subsequently, eleven teaching and non-teaching of the school being aggrieved by such suggestion of the District Inspector of Schools concerned, moved a writ application W.P. 16104 (W) of 2000, contending, inter alia, that the suggestion of District Inspector of Schools concerned was prejudicial to their interest as they would be deprived of from being appointed as permanent teachers when the said school would be recognized. By the order dated September 28, 2000 M.H.S. Ansari J. passed an order of status quo regarding service of the writ Petitioners as teaching and non-teaching staff of the school for a limited period, which was later on extended till January 15, 2001 by Subhra Kamal Mukherjee J. by his order dated December 11, 2000. The said writ application is still pending. The School Authority moved another writ application W.P. 22133 (W) of 2001 which was heard by P.K. Samanta J. In this writ application, the School Authority prayed for allowing the students of class X to appear in Madhyamik Examination. By the order dated January 8, 2001, P.K. Samanta J. allowed such. Ultimately the school was inspected by the D.L.I.T. on February 12, 2001, the government expressed his opinion on May 28, 2001, the Recognition Committee of the Board rejected the prayer of recognition on May 31, 2001 and same view was echoed by the Executive Committee of the said Board by its decision dated June 6, 2001.

7. The State Respondents and the West Bengal Board of Secondary Education as already mentioned earlier did not file any opposition save and except the production of the record that is the report of the D.L.I.T., opinion of the State Government and the decision of the Executive Committee of the Board. The factual context as has been mentioned in the writ application and supplementary affidavits have not been denied by the said Respondents. Hence, applying the doctrine of non-traverse, the factual positions namely lease agreement on December 15, 1973, permanent indenture of lease executed and registered on March 15, 2001 as a continuation of the said agreement, the location and status of the school building, its play grounds and infrastructure as well as the nearest feeder schools and the location of other secondary schools at a far off distance and also the number of students and teaching staffs and other facilities as mentioned in details are. accepted as a real state of affairs. By applying the doctrine of non-traverse in terms of the decision of the Apex Court passed in the case Controller of Court of Controller of Court of Ward, Kolhapur and Another Vs. G.N. Ghorpade and Others, Rowjee represented by Power of Attorney holder C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, this

Court is of the view that the factual matters as detailed in the writ application and the two supplementary affidavits to be accepted as a right state of affairs.

8. Upon hearing all the parties now the point is to be decided on single issue as to whether the impugned decision as assailed in the supplementary affidavit refusing recognition of the school by the said Board is valid or legal. The said Board has placed reliance on D.L.I.T. to deal with the matter. The report of the D.L.I.T., which is the root material is required to be considered. On February 12, 2001 D.L.I.T. inspected the school and a report was prepared, which reads thus:

INSPECTION REPORT

Date of Inspection 12.02.2001

1. (i) Name of School Mother Centenary Institute

(ii) Address Nidayaghat, Pratapnagar, P.O. Nabadwip, Nadia

2. (i) Medium of Inspection : Bengali

(ii) Present status : Class X High School

(iii) Date of establishment : 1.1.73

3. Management

(i) Date of formation of the Organizing Committee: 2.10.72

(ii) Name, Address and Designation of the members (Present)

(a) Uttara Chowdhury Nabadwip Nadia President

(b) Debabrata Chakroborty Do Vice President

(c) Ruksana Begum Do HM & Secretary

(d) Ranjit Gupta Do Member

(e) Khokan Goswami Do Do

(f) Debashish Dhani Do Do

(g) Pratul Singho Do Do

(h) Bholanath Sadhukhan Hooghly Do

(i) Anil Krishna Box Calcutta Do

(i) Juban Krishna Saha Nabadwip Nadia Do

(k) Anil Modak Do Do

(1) Gurudas Debnath Do Do

(m) Paritosh Biswas Do Do

4. Land:

10 Bighas of land denoted by Registered lease deed by Bangabani Society for 999 years.

Mouza -- Rudrapara, Khatian No. 2433, Plot No. J.L. No. 5 L.R. No. 6315, R.S. 875

5. Buildings: Pucca Buildings, Class Room-11-Library-1 Office Room-1

6. Sanitary arrangement: Boys latrine-1, Urinal-1, Girls latrine-1, urinal-1

7. Drinking Water facilities: Two tube wells

8. Library: 350 Books

9. Classwise roll strength of the last three years:

Boys Girls

Gen. - S.C. - S.T. = Total / Gen - S.C. - S.T. = Total/Grand Total

V

VI

VII List attached

VIII

Boys Girls

10. Students present on the date of inspection:

Boys Girls Total

VA 6 12 18

VB 18 18 36

VI 10 27 37

VII 31 21 52

VIII 29 26 55

IX 28 26 54

X - _____

256

11. Distance by the shortest route from the nearest recognized Secondary School.

East - Jatiya Vidyalaya - 7 K.M.

West - NIL

North - Ganga River

South - Bablini Ramendra-Sundar High - 6 K.M.

12. Particulars of organizing teaching and non-teaching staff:

SI. Name Designation Qualification Date of apptt. Subject takn.

1. Ruksana Begum H.M. Bot.(Hon) 01.09.97 L/S
2. Surajit Bhattacharjee A.T. B. Com. 01.09.97: Geo/Eng
3. Soma Das A.T. M.A.(Hist.) 01.01.95 Hist
4. Goutam Modak A.T. M. Com. 01.01.92 W/e&P/E
5. Durba Dey A.T. B.A. 01,01.94 Beng.
6. Anup Ghosh A.T. B. Sc. 01.09.97 P/Sc.
7. Jayanta Banerjee A.T. B.A. 01.09,97 Eng/Ben
8. Sonali Bandopadhyay (Ghosh) A.T. M.A.(Pol. Sc) 01.04.97 Hist
9. A Sengupta A.T. M. Sc.(Math) 01.01.88 P/Sc.
10. S. Bag A.T. B.A. 01,01.85 Beng.
11. S. Chattapadhyay A.T. B.A. 01.04.97 Beng.
12. Swapna Malo A.T. B. Sc. 01.09.97 S.C.
13. Udayan Maitra Clerk H.S. 01.01.92
14. Dalim Sen Librarian B. Sc.(H)Lib. 01.01.97
15. Bhabani Banerjee "D" H.S. 01.01.85
16. Nema Ch. Chattopadhyay "D" S.F. 01.01.97

13. Particulars of feeder school.

1. Urban Basic Primary School
2. Kalpataru Primary School
3. Pratapnagar Primary School
4. Jyotirmoyee Primary School

14. Financial Condition

- a) Reserve Fund - Rs. 5000/- Allahabad Bank No. 3003/13
- b) Any other fund - 1. Examination fund Rs. 500/- Do No. 3008/13
2. General fund Rs. 500/- Do No. 3004/13
3. Development fund Rs. 500/- Do No. 3005/13
4. Games fund Rs. 500/- Do No. 3009/13

15. Remarks of the District Level Inspection Team.

The school was inspected vide Hon"ble Justice Amitava Lala J. order dated 7.10.99 in reference to Court case No. W.P. 17210 (W) of 99 on 12.2.2001. The school is not recommended for recognition to a high school for the following reasons.

1. It is reported that the school was established 1.1.73 but they did not produce any receipt of Rs. 25/- of W.B.B.S.E.
2. There are no furniture in the class rooms
3. Sanitation system is not satisfactory
4. The land was required only lease deed was made. Signature of the member of the District Legal Inspection Team.

1. / 2. / 3. / 4.

9. From the report of D.L.I.T. it appears that there was no adverse opinion so far as need of the school in the locality. In the D.L.I.T. report under Clause 13, four names of primary school have been mentioned as feeder schools. In Clause 11 of the report, two schools have been mentioned as nearest by the shortest route where secondary education would be available by mentioning the distance 6 K.M. and 7 K.M. respectively. Number of students on the date of the inspection has been mentioned as 256 and the land of the school under Clause 4 has been mentioned as 10 bighas under lease agreement with Bangabani. Building has been mentioned as pucca buildings consisting of 11 class rooms, one library room and one office room. Regarding sanitary arrangements, it is mentioned that there are separate latrines and urinals for girls and boys respectively. Drinking water facilities is proper and in the library there are 350 books. Under the heading of teaching and non-teaching staffs who are organizing the school, the names of 16 staffs have been mentioned, amongst them, it appears that there are so many Master Degree holders whereas other teaching staffs are graduate and non-teaching staffs are also qualified as per recruitment rules. The financial condition of the school also has been mentioned as sound. Despite such, D.L.I.T. refused to recommend on four grounds, which reads thus:

1. It is reported that the school was established 1.1.73 but they did not produce any receipt of Rs. 25/- Of W.B.B.S.E.
2. There are no furniture in the class rooms.
3. Sanitation system is not satisfactory
4. The land was required only lease deed was made.

10. In answer to the ground No. 1 that the school could not produce any receipt of Rs. 25/- being fees which was required to be filed along with the application praying recognition of the school, it has been submitted in the supplementary affidavit by the Petitioners that the school was set up on January 2, 1973 and

application was filed on January 4, 1973 to the District Inspector of Schools concerned. Documents to that effects have been annexed. The reminder letters as served to District Inspector of Schools on diverse dates namely April 7, 1974, April 28, 1976, March 11, 1978 also have been annexed. In that view of the matter, the ground as taken is contrary to the documents in the writ application.

11. So far as the ground No. 2 is concerned that school has no furniture for class rooms, it has been submitted in the writ application as well as in the supplementary affidavit that the school had introduced the pattern of education as introduced by Sri Rabindra Nath Tagore at Santiniketan that is "open air system of education" as well as norms of basic education where students sit on the floor as per Indian Custom of sitting. It has been mentioned categorically that the furniture were not purchased following the concept of basic education. It has been further mentioned in the affidavit that in the event of any difficulty to recognize the school for non-having any wooden furniture to accommodate the students in chairs with tables, the School Authority would provide that, but the recognition should not be denied on that ground.

12. In reply to the ground No. 3 about sanitation system, which has been mentioned unsatisfactory, it is submitted in affidavit that same has no basis as from CI. 6 of the inspection report it appears that there are latrines and urinals for boys and girls separately.

13. In answer to ground No. 4 that as the land was taken under lease deed so recommendation for recognition of school was not made, is also not legally sustainable since under procedures for recognition of the school, it is provided that land may be procured under lease agreement. The report of the D.L.I.T. was placed to the Education Department but the Secretary of the said Department did not recommend by its decision dated May 28, 2001 in the following terms:

Re.: Recognition of Mother Centenary Institution, Nadia.

In a solemn order passed on 7.10.99 Hon"ble Mr. Justice Amitava Lala was pleased to direct the Education Department to forward DLIT report and other papers. along with their comments to the W.B.B,S.E. within two weeks from the date of receipt of such papers.

The DLIT Report dated 12.2.2001 has been received on 17.05.01 being sent by D.S.E. vide No. 1344/LS dated 17.05.01. On perusal of the said report it appears that:

1) the school claims to have been established in 1973 but it did not apply to the Board within the stipulated period submitting necessary fees;

2) the land on which the school situated was possessed through lease Deed executed on 5.3.2001. As per para. 1 of the said deed the lesser has given the lease for 999 years from 1988. As per para. 3 of the said Deed the lessee is entitled to construct building. So, it is clear that the date of establishing as claimed for cannot be accepted. The school was established after 1988 in

violation to Clause 2(e) of G.O. No. 553-Edn.(S) dated 26.4.1978.

3) Though it is not a recognized school it has opened class IX and X which is highly irregular since registration of students of class IX with the Board is mandatory for taking part in Madhyamik examination.

4) The staff of the school has not been recruited following prescribed rules.

5) The reserve fund is inadequate.

6) The DLIT found no furniture in the class rooms.

With these comments this Department does not recommend the school for its 1st recognition. The DLIT Report and other paper may be sent to the Board for taking necessary action.

14. The Recognition Committee considered those and refused recognition and ultimately the Executive Committee confirmed the views, which was communicated by Memo No. S/440 (1-5) dated June 8, 2001 issued by the Secretary, West Bengal Board of Secondary Education. The communication reads thus:

From:

Dr. P.K. Haldar,

West Bengal Board of Secondary Education

77/2, Park Street

Calcutta - 16.

To

The Secretary

Mother Centenary Institute

Nidayaghat Pratapnagar, Nabadwip

Dist. Nadia

Sub.: W.P. No. 17210 (W) of 1999 / Guardian Forum V; State of West Bengal and Ors. / Reg.: Recognition of Mother Centenary Institute, Dist. Nadia

Dear Sir,

I am directed to inform you that in compliance with the Hon'ble High Court order dated 7.10.99 passed in the matter referred to above the Recognition Committee considered in its meeting dated 31.5.2001 the views of the State Govt. vide memo No. 238-SSE/2001, dated 28.5.2001 and the D.L.I.T. report thereto u/s 19(3) of the Act, and Resolved that the committee regrets its inability to recommend Mother Centenary Institute (Proposed), Nadia for recognition on the grounds mentioned below:

1. The school claims to have been established in 1973. But they did not apply for recognition following the prescribed norms;
2. the land of the school was possessed by lease deed executed on 5.3.2001. So the date of establishment cannot be accepted. The school was established after 1988 in violation of Clause 2(e) of G.O. No. 553-Edn.(S) dated 26.4.1978;
3. The school opened classes IX and X in an irregular manner; and in violation of the prescribed norms;
4. Staff recruited without following prescribed rules;
5. Reserve Fund is inadequate;
6. D.L.I.T. did not find furniture in the class rooms;
7. Neither D.L.I.T. nor the State govt. recommended for recognition.

The Executive Committee of the Board considered the above resolution of the Recognition Committee u/s 19A(3)(c)(i) of the Act 1963, as amended, in its meeting dated 6.6.2001 and approved the same by rejecting the prayer for recognition of the said school.

Yours faithfully / Sd/- P.K. Haldar, Secretary

Memo No.: S/440(1-5) Date: 8.6-2001

Copy forwarded for information to:

1. The Secretary, School Education Department, Secondary Branch, Bikash Bhawan, Calcutta-91.
2. The D.S.E., West Bengal, Bikash Bhawan, Calcutta-91.
3. The D.I. of Schools (SE), Nadia, P.O. Krishna-nagar, Dist. Nadia.
4. Sri M.K. Chakraborty (LS)
5. Sri Arun Kumar Mitra, Advocate. High Court. Kolkata

Secretary

15. Having regard to the aforesaid factual matrix it appears that the Recognition Committee and the Executive Committee of the Board, did not at all consider the matters in its proper perspective. So far as the ground No. 1 that the school did not apply for recognition is not legally tenable. It appears from the records in this writ application that the school applied for recognition on January 4, 1973, which was received by the District Inspector of Schools concerned on January 5, 1973. Subsequently, reminder letters were issued. on diverse dates namely on April 7, 1974, April 28, 1976 and March 11, 1978. The Respondents have not controverted those documents. this Court is accordingly accepting those as a valid documents applying doctrine of non-traverse. Hence, it is proved that school applied for recognition in the year 1973.

16. So far as the ground No. 2 that as lease deed was executed on March 5, 2001, hence, school was established after 1988, is also not legally tenable. In the supplementary affidavit, the Petitioner has filed a xerox copy of the lease agreement dated December 15, 1973 signed by Uttara Chowdhury on behalf of Bangabani and Krishna Kanta Debnath on behalf of School Authority, wherefrom it appears that Bangabani allowed the School authority to use their three buildings for the purpose of school and also allowed to use the land under Khatian No. 2433, Dag No. 876 measuring 10 Bighas for the purpose of running the school. From the indenture of the lease executed and registered on March 5, 2001, it appears that in para. 1 in the recital it has been mentioned that the lease was for a tenure of nine hundred ninety nine years with effect from the year 1988, which means from 1st day of January 1, 1988. As already mentioned that the Respondents did not controvert those facts by filing affidavits. Hence, it is proved that the school was established prior to 1988 and more precisely as it appears from the document itself that is the lease agreement of the 1973 read with indenture of lease executed on 2001, the school was set up in the year 1973 prior to 1988. Having regard to such position, the ground No. 2 is not legally sustainable.

17. Ground No. 3 as mentioned that the school opened Classes IX and X in an irregular manner and in violation of prescribed norms, are also not legally sustainable. To set up High School, there is no question of following any procedures. It is the case of the writ Petitioners that they had set up X class High School by private initiative. From the inspection report it also appears that the said authority found that in class IX there were 26 students at the material time of inspection. Furthermore, from the direction of Amitava Lala J. dated October 7, 1999, it appears that the school was allowed to send the Madhyamik examinees as external candidates. Challenging this order, the State Government and the West Bengal Board of Secondary Education did not prefer any appeal. The Appeal Court in MAT 224/2000 filed by the writ Petitioners, by the order dated February 15, 2000 confirmed the said views of the trial court after hearing all parties. It further appears that subsequently school was allowed to send the students as external candidates as per order of the Court. In that view of the matter, the ground No. 3 is not legally sustainable and same cannot be taken as a ground to refuse recognition of the school.

18. So far as the ground No. 4 is concerned about non-recruitment of the staffs following the prescribe rules, the same is not legally sustainable. In any privately organized school, there is no question of recruitment of staffs on following any rules for recruitment as service as rendered by staffs are voluntary without any remuneration from public exchequer. The organized staffs render service voluntarily only with the expectation of getting approval with effect from date of recognition of school, subsequently when school would be recognized, however, subject to staff pattern of school and necessary academic qualification of staffs. From the inspection report of D.L.I.T., it appears that there are four teachers qualified with Master Degree, three teachers are Science graduates, four

teachers are Arts graduates and there is one Commerce graduate. It further appears that there is one Librarian qualified with the degree Library Science. Hence, this ground as taken to refuse recognition of the school is not legally sustainable.

19. So far as the ground No. 5 is concerned that the reserve fund was inadequate, the same is not legally sustainable from the D.L.I.T. report. In Clause 14 of the report, D.L.I.T. has opined that the reserve fund was Rs. 5000/- and there are other funds under different heads namely examination fund, general fund, development fund and games fund. D.L.I.T. report accordingly did not comment that the school had no reserve fund or reserve fund was inadequate.

20. So far as the ground No. 6 is concerned that the D.L.I.T. did not find furniture in the class room is a true state of affairs. The school has taken a stand that since they are following the Santiniketan pattern and mode of basic education system, accordingly they have not purchased any furniture, but if the board desires that the furniture should be provided, the School Authority would purchase the same. Hence, this ground is not also legally sustainable to refuse recognition. There are so many junior and senior basic schools in West Bengal where there is no furniture namely chair and tables for the students and where education is imparted either in open air under shadow of big trees or in the class rooms by making sitting arrangements on the floor. Hence, this ground is not legally sustainable to refuse recognition of the school.

21. So far as the ground No. 7 is concerned that D.L.I.T. and the State Government did not recommend, it appears that in the D.L.I.T. report and the State Government's recommendation, it was never opined that there was no need of the school, that there was no student's intake in the school and there was no feeder school's. On the contrary from the reports, it appears that they have accepted the school building, student strength, teaching staff and the need of the school.

22. Having regard to those grounds, now the matter to be looked into with reference to the procedures for recognition of the school. There are two circular letters in the field of recognition of the school. One under the heading "condition to be fulfilled prior to seeking recognition as a Junior High School". In this circular letter, so far as the school building is concerned, it is provided to this effect:

No school should be held in rented buildings except in very exceptional circumstances. If any school is held in a rented buildings, the building must be leased out to the Managing Committee of the school for a long term.

23. On a bare reading of the said, it appears that the school could be established in a building leased out to the Managing Committee of the school for a long term. In the instant case, the School Authority entered into the lease agreement for nine hundred ninety nine years with effect from January 1, 1988 to utilize three

buildings of Bangabani for school purpose having total 15 rooms as well as to utilize 10 Bighas land for the purpose of school. Having regard to such, it appears that the school fulfilled the conditions for recognition in terms of the said circular letter as issued by the authorities concerned. So far as sanitary arrangement as mentioned in the said procedure it reads thus:

Sanitary arrangement: Proper sanitary facilities must be provided. There should be sufficient number of latrines and urinals and separate arrangements should be made for the teachers and the pupils. If there are girl-pupils or lady teachers in a boys' school, separate sanitary arrangement must be made for them.

24. On perusal of the documents annexed in the writ petition and supplementary affidavit and D.L.I.T. report, it appears that there are separate latrines and urinals for boys and girls. Hence, the sanitary arrangement as per the procedure is perfectly in order.

So far as the reserve fund is concerned as mentioned in the said circular letter it reads thus:

Reserve fund: A 4-class Junior High School should have a Reserve Fund of at least 1500/- (Rupees one thousand and five hundred only) invested in Postal Savings Bank Account or in National Saving Certificates. A 2-class Junior High School should have at least Rs. 500/- (Rupees five hundred only) in the Reserve Fund invested likewise.

In the instant case from D.L.I.T. report it appears that reserve fund was Rs. 500/-, hence, it has also fulfilled the criteria on reserve fund.

25. There is another circular letter issued under Memo no, 553-Edn.(S) dated April 26, 1978 whereby different norms were prescribed for recognition of the school, which provides inspection by D.L.I.T., recommendation of State Government and thereafter recognition of the same by the Board. It is true that under Clause (e) of the said Memo dated April 26, 1978 it is provided that the organization of voluntary school should be discouraged but that does not mean as a complete embargo on establishment of schools voluntarily by private initiative. Clause (e) of the said Memo reads thus:

Organizations of spontaneous and voluntary schools should from now on, be discouraged. Schools may be started only under instructions from the Govt. or the Board.

26. From the document as annexed in the writ application it is proved by applying doctrine of non-traverse as the State Government and the Board of Secondary Education did not controvert the same by filing affidavits, that the school was established long back in the year 1973 in the three buildings in terms of the agreement with the Bangabani. Further it appears that different reminders were issued praying recognition since the year 1973 to 1978 at different points of time. Having regard to such documents, it is clear that this school was established in the year 1973. In the D.L.I.T. report, the Inspecting Team also

recorded at the top of the report that the school Was set up in the year 1973. Hence, in that view of the matter and having regard to the factual matrix of the case that there are three buildings with 15 rooms in occupation of the school and 10 bighas land, which are being utilized as play ground and garden of the school, the numbers of intake of the students, numbers of feeder schools in total four primary schools and distance of secondary schools at a far of distance of 6 to 7 K.M. away and having regard to the D.L.I.T. report, this Court is of the view that there is a need of the school and the school has every infrastructure in terms of the procedures and circular letters for recognition of the school. Having regard to such position, the impugned decision of the West Bengal Board of Secondary Education that is of the Executive Committee of the said Board is not legally sustainable.

27. Before parting with the matter, it is mentioned that in view of the order passed in the writ application W.P. 17210 (W) of 1999 as disposed of on October 7, 1999 by Amitava Lala J. directing inspection by D.L.I.T. and to follow other actions by different authorities regarding recognition of the school, the West Bengal Board of Secondary Education now cannot take the point that the school since did not apply in 1973 and was set up after 1978 it is not a fit case for recognition. In the earlier writ application, the State Government and the said Board did not take this point when Amitava Lala J. directed inspection of the school by the D.L.I.T. following the circular letter of memo No. 553-Edn.(S) dated April 26, 1978. Hence, the point as taken though factually not tenable from the documents in view of the fact that the school was set up in 1973 which has been proved, cannot be urged by the said Board applying the doctrine of constructive res judicata. In the earlier writ application before Amitava Lala J. when His Lordship directed inspection of the school and other follow up action in terms of memo No. April 26, 1978, the question of non-filing any application in proper form and/or with proper fees and/or and the question that the school was set up after 1978 were not urged by the Respondents. At that time, the Board could have taken those points and thereby could have obtained the order of rejection of the writ application. Furthermore, the, said Board did not challenge the order of Amitava Lala J. in appeal. On the contrary it appears that the order of Amitava Lala J. reached its finality and it was confirmed by the Division Bench allowing the school final examinees to appear as external candidates from the said school and Board accepted the said order. Having regard to such, the decision of the Board on that issue is not legally sustainable as it is barred under the said doctrine of constructive res judicata. Reliance may be placed to the judgment of Apex Court passed in the case, Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another, the relevant paragraphs being profitable to referee reads thus:

When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, is taken as decided.

In another case *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.)*, Andheri and Others, Apex Court held as follows:

An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.

28. Having regard to the judgment of apex court and earlier observation as made, this Court is of the view that impugned decision of Executive Committee of the said Board dated June 6, 2001 refusing recognition of schools is not legally sustainable. Hence, the said decision is set aside and quashed. The Executive Committee of the West Bengal Board of Secondary Education is directed to recognize the school within four weeks from the date of communication of the order with liberty to impose condition of making arrangements of school furniture for sitting arrangement of students if they so desire. While passing this order for recognition of the school, this Court is not unmindful of the fact that seldom Court passes a mandatory order. In view of the special facts of the case as depicted in the writ application and the supplementary affidavits, which has not been controverted, it appears before this Court that further remand of the matter for consideration of the issue would be an useless formalities. Since school as well as students is suffering since 1973 without recognition and already the students are appearing in Madhyamik Examination as external candidates as per Court's order, it will be unjust and illegal to refuse recognition. Having regard to such position, mandatory order is passed directing the said Board to recognize the school. Writ application is accordingly allowed.

Let the records as placed by the Council, West Bengal Board of Secondary Education be handed over to said Council.

Let urgent xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.