
(2002) 05 CAL CK 0025

In the Calcutta High Court

Case No : M.A.T. No. 1803 of 2001 and C.A.N. No. 6532 of 2001

West Bengal Board of Secondary Education

APPELLANT

Vs

Dakhiruddin Khan and Others

RESPONDENT

Date of Decision : 07-05-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226

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

Citation : AIR 2002 Cal 200 : (2003) 1 CALLT 84

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Jayanta Kumar Biswas, J

Bench : Division Bench

Advocate : Sumit Kumar Panja and Tulsidas Maity, for the Appellant; Saktinath Mukherjee, B.B. Biswas and L.K. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, CJ.

1. This is an appeal directed against the order passed by the learned single Judge dated 22nd May, 2001 whereby the learned single Judge has set aside Memo No. S/631 dated 17th November, 2000 issued by the Secretary, West Bengal Board of Secondary Education and directed the authorities to take steps for recognition of the school in question as per the provisions of law forthwith within two months from the dated of communication of the order. Aggrieved against this order the present appeal has been preferred by the West Bengal Board of Secondary Education.

2. The Managing Committee of the Patharghata Junior High School (hereinafter referred to as the school), a school set up for the Class VIII standard, and some guardians of the wards of the said school filed a writ application challenging the Memo No. S/631 dated 17th November, 2000 issued by the Secretary, West Bengal Board of Secondary Education. It was intimated to the school authorities that the recognition committee of the Board did not recommend the school for recognition. It may be relevant to mention here that the recognition committee

of the Board took up the case for recognition of the school in pursuance of earlier writ petition filed by the management in which a direction was given by this Court on 15th February, 2000 for consideration of the recognition of the school. In pursuance of the aforesaid direction given by this Court on 15th February, 2000, the Board took up the matter for consideration and the same was placed before recognition committee of the Board which refused to recommend the school for recognition on the following grounds:

"1. The school claims to have been established in 1983 in violation of Clause 2(e) of G.O. No. 553-Edn(S), dated 26.4.78, moreover the school has only 29 decimal of land, which is inadequate and has been possessed in 1985 for which the date of establishment as claimed for cannot be accepted.

2. The school building is kachcha having bamboo fencing and tile shed;

3. There are five class rooms, but in view of the enrolment the number of room is inadequate.

4. The teachers have not been appointed in terms of G.A. Rules.

5. The State Government does not recommend the school for its recognition for lack of infrastructure."

3. Aggrieved against this order passed by the Board the present writ petition was filed. The learned single Judge after considering the matter at length came to the conclusion that the reason given by the Board are not relevant as it was observed that the school's running with sufficient roll strength of students and the same has been recommended for recognition by the concerned Panchayat Samity and Nadia Zila Parishad. Secondly, it was found that the requirement of a Pucca construction is not necessary. It was observed that since the State Government has shown complete apathy by not setting up a school, therefore, it cannot be prudent to take such a strict view that kachcha building is not suitable for housing a school. It was further observed by the learned single Judge that teacher pupil ratio cannot provide a ground for denying recognition. The learned single Judge held that it is rather not better not to have an educational institution at all than to have an institution with higher number of students. For the above reasons the learned single Judge negated the State Government's objection with regard to lack of infrastructure, Therefore, the learned single Judge found that the Government has also not correctly approached the matter for not recommending the school for recognition. It was also observed by the learned single Judge that the authorities have not denied that the present school have office room, one common room, separate latrine for boys and girls students and necessary arrangement for drinking water apart from the five class rooms. It was also observed by the learned single Judge that the Board in similar circumstances has granted recognition to Vivekananda Adibasi Vidyapith in the same District in Nadia. With regard to teachers not being appointed in terms of Government Rules the learned single Judge observed that the same is not sustainable because the application of the Government Rules would only arise after the

school is recognised. On the aforesaid reasons the learned single Judge felt persuaded to direct the Board to recognize the school. Therefore, the present appeal has been preferred by the Board of Secondary Education.

4. Mr. Panja, learned counsel for the Board, strenuously urged before us that there are sufficient guidelines which have been laid down by the Government and Board and detailed procedure is in existence with regard to what is the requirement for a school to be recognized by the Board. Before we proceed to examine the factual aspect of the matter, we shall first advert to what are the guidelines bearing on the subject. In the present case we are concerned with the recognition of Junior High School and the guidelines are provided under West Bengal Board of Secondary Education Act, 1963. The condition to be fulfilled prior to seeking recognition as a Junior High School are as under;

"Condition to be fulfilled prior to seeking recognition as a Junior High School

I. Site and accommodation: The site of the school should be free from objectionable surrounding; which should be peaceful and conducive to smooth working of school.

The school building should be a pucca structure with well-ventilated and spacious rooms for holding the classes. Each room must have a floor-space of at least 400 sft. so that space may be provided at the rate of 10 sft. per pupil. Provision should be made for separate rooms as follows:

For 4-Class Junior High School

For 2-Class Junior High School

(i)

4-Class rooms, each measuring 400 sft.

(i) At least three rooms, each measuring 400 sft.

(ii)

One Science Room

(iii)

One Office Room

If It is not possible for the school to provide immediately for it a pucca building, the building must have the floor cemented. The walls and the roof must not be made of inflammable materials and if the roof is made of C.I. sheets, ceiling with adequate space for ventilation should be provided.

The building should have a compound of considerable size attached to it, which

can be used for a play-ground and for such outdoor activities of the pupils as gardening, etc.

The site, building and other properties of the school should be vested in the Managing Committee by a Registered Deed of Gift.

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

II. 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.

III. Teaching Staff :

For 4-Class Junior High School:

Headmaster and 4 assistant teachers as follows:

2 graduates (Headmaster should preferably be a B.T.)

1 LA. and I.Sc.

1 teacher capable of teaching a Classical Language and Hindi For 2-Class Junior High School: Headmaster and 2 assistant teachers.

Headmaster should preferably be a Graduate or a trained undergraduate.

2 Assistant teachers I.A./LSc. (one of them should be capable of teaching Hindi).

In cases of 4-Class Girls' Junior High Schools and 4-Class Boys' Junior High School in backward areas, if one of the teachers offered a classical language as a combination of subject in his LA. or B.A. Examination, the fifth teacher may be an undergraduate capable of teaching Hindi.

The Board, however, reserves the right to fix the qualification of the teachers and also the number of teachers required for each school in the light of teaching requirements of the school.

While considering extension of recognition of a school that is already recognized or recognition of the school as Class-X school, the Board reserves the right to direct that a particular teacher or teachers should be replaced by teacher or teachers with such qualification as the Board may decide.

IV. There should not be any teacher or the staff who is over 60 years of age.

V. Roll-strength should be as follows:

In 4-Class Junior School 120 In 2-Class Junior School 60

VI. Co-education: No Boys' School is permitted to have a Girls' section.

VII. Laboratory for Elementary Science: Every school must have a fairly equipped laboratory for teaching Elementary Science which is compulsory subject in the present curriculum, with all the major appliances and charts listed in the Board's syllabus on the subject,

VIII. Extra Curricular Activities: Games: Each school should have a suitable playgrounds and all facilities for regular drills, sports, games and athletics should be made available for the pupil.

Library: Each school must have a well-equipped library containing a number of books on education and of juvenile interest. There should also be books of reference for the use of teachers. Copies of all textbooks prescribed by the Board in different subjects should be maintained in the library and the teachers and also the students should use all these books to be acquainted with different treatment of the same subject in these books. Such books also may be made available to the poor pupils. It should be seen that the pupils regularly use the library.

The library of 4-Class Junior School should contain 500 books including books on Arts and Methods of teaching and Juvenile literature. In case of 2-Class Junior High School, the number of such books should be at least 200 (All text-books are excluded from the aforesaid figures).

IX. Tiffin, drinking water: Arrangements should be made for the supply of good drinking water which should be so preserved as to be free from the risk of contamination. It should also be seen that good food at moderate price is made available to the pupils for their tiffin. It need not be free.

X. Medical examination of pupils: Arrangement should be made for periodic medical examination of each pupil and records should be maintained of such examination. Wherever necessary, the guardians should be intimated of the defects that may be found in course of these examinations and they should be also advised as to steps that may be taken of the removal of these effects.

XI. 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 Savings Certificates. A 2-Class Junior High School should have at least Rs. 500/~ (Rupees five hundred only) in the Reserve Fund invested likewise.

XII. The salaries of the teacher should be according to the scales as laid down by the State Government, from time to time.

XIII. The tuition fee rates should be as follows:

Area

Classes

(V-VI)

(VII-VIII)

Calcutta and Howrah

Rs. 5.00

Rs. 5.50

District towns and Industrial area

Rs. 4.00

Rs. 4.50

Rural areas

Rs. 3.00

Rs. 3.75

XIV. The permanent teachers should be given the benefit of Provident Fund, as soon as the school is recognized by the Board.

XV. The Secretary of the school should not keep with him more than Rs. 50/- in hand in cash at a time.

XVI. All Scientific apparatuses and appliances, maps, charts for teaching Geography must be procured.

XVII. Rules regarding admission and transfer must be strictly followed.

XVIII. The school must be on a sound financial footing and its income from tuition fees and other sources must be sufficient to meet its expenditure.

XIX. Management of the School: When applying for recognition, it will be required to reconstitute its Managing Committee according to the provisions laid down in the Government Notification No. 3675-Edn(G)/G.8B-40/59 dated 19.9.1960, within such period as may be directed by the Board.

XX. Conditions to be fulfilled prior to recognition as 4-Class Junior High School for the first time as noted in the preceding paragraph may be relaxed by the Board in favour of Girls' Junior High Schools in backward areas after consideration of the merit of individual cases."

5. The procedures for submission of application for recognition as a Junior High School are as under;

"Procedure for submission of application for recognition as a Junior High School

An application for recognition of a Junior High School for the first time should be submitted in duplicate to the Director of Public Instruction, West Bengal, positively by the 31st May of the year proceeding that form which recognition is

applied for. Junior High Schools should have 4-Classes from Class V to VIII. The establishment of 2-Class Junior High Schools from V to VI is discouraged by the Board but recognition of such cases may be considered for the time being on the merit of individual cases. The application should be accompanied with two statements showing particulars as noted below:

- (1) Name of the school in full with Postal address;
- (2) Name of Sub-Division, P.S. & Union in which the school is located.
- (3) Name of telegraph Office and means of communication from the nearest Railway Station.
- (4) A short history of the school.
- (5) Date of reconstitution of the Managing Committee as also the name, occupation and category of each member.
- (6) Name, age, qualifications, experience and salary of each teacher.
- (7) Roll-strength, class by class.
- (8) Number of rooms and their floor-spaces and how they are distributed.
- (9) The nature of school building--whether it is brick-built or made of mud walls, the materials used for constructing the floor, the walls and the roof.
- (10) Area of site--whether site, building and the school properties are vested in the Managing Committee.
- (11) Sanitary arrangement and arrangement for supply of drinking water.
- (12) The amount in the Reserve Fund and how invested,
- (13) Furniture, apparatus and appliances for teaching Science and Geography.
- (14) Arrangements of Physical Education, Games, Sports, etc. Whether they have any playing-ground.
- (15) Number of books in the library and the monthly allotment for the library.
- (16) Names of nearest High Schools and Junior High Schools (4-Class and 2-Class) with distance and direction within a radius of 5 miles."

6. Subsequently the Government of West Bengal has also laid down conditions for recognition of secondary schools and approval of organizing staff by its order dated 26th April, 1978. The procedures provided are as under:

"PART XIII Recognition of Secondary Schools and Approval of Organizing Staff
Government of West Bengal Education Department Secondary Branch

No. 553~Edn(S) Dated 26.4.1978 From : Sri B.N. Chatterjee Special Secretary to the Government of West Bengal.

To : The Directorate of Secondary Education, West Bengal

Sub : Recognition of Secondary Schools in West Bengal with effect from 1.1.78

The undersigned is directed to say that after due consideration of financial resources it has been decided by the State Government that a limited number of schools including girls schools be recommended for recognition from 1.1.78 or from subsequent academic sessions. A District wise panel should be prepared for the purpose in the manner indicated below.

2.(a) The schools should be selected strictly on the basis of the need of area, population and general education considerations. There should be a Central Committee for screening the applications. The Committee may consist of the following members:--

- (i) Three persons nominated by the Board;
- (ii) The D.S.E.;
- (iii) The D.D.P.I. (S.E.);
- (iv) The D.D.P.I. (S.E.W.);
- v) Three persons nominated by Government.

The Committee will consolidate the reports received from the Districts and send the consolidated report to the Government with recommendations. The list finally approved by Government will be sent to the Board for consideration.

(b) There should be District level inspecting team consisting of (i) D.I. of Schools (Secondary), (ii) a nominee from the Board and (iii) a nominee from the Government. The inspecting team will fill up a questionnaire and give general remarks in the questionnaire. The questionnaire may include the following points:--

- (i) Name and distance of three nearest High/Jr. High Schools from the school under inspection;
- (ii) The year in which the school was established;
- (iii) Year-wise roll strength;
- (iv) Number of students sent up for examination during the last three years (if specially permitted to do so);
- (v) Pass/Failure (year-wise);
- (vi) Accommodation;
- (vii) Library;
- (viii) Sanitary arrangement;
- (ix) Economic condition of the school including reserve fund;

(x) Present roll strength (class-wise);

(xi) Any other information required according to the norms prescribed by the Board.

(c) The Board and the Directorate will place a District-wise list of applicant schools with location and date of application to the respective D.I. of Schools (Secondary). (The applications pending with the Board/ Directorate should be sent back to the respective Districts).

(d) Inspection may be taken up in each District with ten to twelve such schools from among each of the categories of boys, girls and bifurcated girls schools according to Board's circular, if any. The oldest school and the comparatively be inspected and the report sent to the Central Committee with a priority list as soon as the inspection is completed. The remaining applicant schools may be subsequently inspected by the District inspecting team and a panel of eligible schools may be prepared and sent to the Central Committee for recommendation for future recognition.

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

(f) Co-education, in general shall not be discouraged. Only in those case where co-education affects the roll strength of the existing recognised schools, there should be restrictions.

(g) The Directorate of School Education and Board have been requested to conduct a survey to identify pockets where new schools are necessary. These areas should be given precedence over other areas in the matter of recognition of schools. If necessary, Government may be moved for establishment of new schools, specially in educationally and economically backward areas.

3. Government will retain power of specially recommending schools of the following type of recognition, namely:--

(i) Schools set up and maintained by linguistic minorities;

(ii) Schools set up and maintained by Central or State Government undertaking including those in development townships like Haldia.

4. Government schools like the one in Salt Lake Township or Kalyani should receive special consideration for the purpose of recognition.

Sd/- Illegible Special Secretary."

7. Therefore, it is not a case that there are no sufficient guidelines existing on the subject. There are specific guidelines as reproduced above which lay down the norms for recognition or non-recognition of a school. In pursuance of the above guidelines an inspection team inspected the school and found shortcomings and the same was sent to the Board and the Board after

considering the matter rejected the prayer for recognition of the school. The order reads as under:

"Dr. P.K. Balder Secretary, West Bengal Board of Secondary Education 77/2, Park Street, Calcutta-16

To

The Secretary, Patharghata Junior High School, P.O. Patharghata, District-Nadia.

Sub: W.P. No. 187(Wof 2000

Jamaluddin Mondal

Versus

State of West Bengal and Ors.

Reg: Recognition

Dear Sir,

I am directed to inform you that in compliance with the Hon"ble High Court order dated 15.12.2000 passed in the matter referred to above the Recognition Committee of the Board considered the views of the State Government vide Memo No. 363-SE/2000, dated 3.10.2000 and the D.I.I.T. report thereto u/s 19(3) of the Act, and resolved in its meeting dated 25.10.2000 that "the Committee regrets its inability to recommend Patharghata Junior High School, Nadia", for recognition on the grounds below:

1. The school claims to have been established in 1983 in violation of Clause 2(e) of G.O. No. 553-Edn(S), dated 26.4.78, moreover the school has only 29 decimal of land, which is inadequate and has been possessed in 1985 for which the date of establishment as claimed for cannot be accepted.
2. The school building is kachcha having bamboo fencing and tile shed;
3. There are five class rooms, but in view of the enrolment the number of room is inadequate.
4. The teachers have not been appointed in terms of G.A. Rules.
5. The State Government does not recommend the school for its recognition for lack of infrastructure.

The Executive Committee of the Board consider the above resolution of the Recognition Committee u/s 19A(3)(c) (i) of the Act, 1963, as amended; in its meeting dated 31.10.2000 and approved the same by rejecting the prayer for recognition for lack of infrastructure.

Yours faithfully,

SD/- P.K. Halder, Secretary."

8. Though the District Level Inspection Team (DLIT) found that there are no adequate infrastructure in the school but they recommended for recognition of the school because of local need.

9. Mr. Panja, learned counsel appearing for the Board, urged before us that once the parameter for recognition of school has been laid down and the same are not fulfilled then the authorities are within their right to deny recognition to the school. He has also referred to some of the circulars issued by the State Government from time to time. He submitted that ultimately it is the State who has to bear the burden of running a school when it is recognized by granting grant-in-aid. Recognition is not a fundamental right of the managing committees of the schools. If they want to be recognised they have to fulfill the conditions laid down by the Board and the Government and in failure thereof it is not binding on the State recognize such schools so as to saddle the State Government with additional financial liability. It is submitted that every child has the right to education upto 14 years of age but not the management has right to be recognized notwithstanding the shortcomings. But the question is whether grant of recognition de-hors the guidelines can be sought in the Court and can the Court direct recognition of such schools though they lack the basic requirement laid down by the Board or by the State. In the present case the DLIT found that there is no proper infrastructure and the Board gave a reason after examining all the material and the report of the inspection team that the school claims to have been established in 1983 which is against Clause 2(e) of the Government order dated 26th April, 1978. On 26th April, 1978 by the circular issued by the State Government, as reproduced above, the Government has decided that looking to the financial resources, limited number of schools including girls schools be recommended for recognition from 1.1.1978 on the basis of the District wise panel prepared in the manner provided by the circular and in that it was mentioned that the schools should be selected strictly on the basis of the need of area, population and general educational considerations. The Circular provided for a Central Committee for screening applications. It also provided for a District Level Inspection team consisting of the D.I. of Schools (Secondary) and a nominee from the Board and a nominee from the Government and that Committee will prepare a report in questionnaire form and the questionnaire shall include, like name of the school, year in which the school was established, number of students sent up for examination during the last three years and the result of pass and failure year wise, accommodation, library, sanitary arrangement, economic condition of the school including reserve fund, present roll strength and any other information required according to the norms prescribed by the Board. Therefore, on that basis report was prepared and the same was submitted. One of the reasons given by the Board was that the school was established in violation of Clause 2(e) of the Government order dated 26th April, 1978. Clause 2(e) reads:

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

Government or the Board."

10. Therefore, establishment of school, at the inception, was in violation of Clause 2(e) of the Government order dated 26th April, 1978. In the said order Government has categorically laid down that schools will only be started after instructions from the Government or the Board. But the present management started the school on their own without the instruction from the Government or the Board. Therefore, the first reason given by the Board cannot be said to be wholly without basis. Secondly, it was also pointed out that the school has only 20 decimal of land, which is inadequate. It was also pointed out that the land was possessed in 1985 whereas it was alleged that the school started in 1983, which appears to be contradictory on the face of it. This objection raised by the Board also cannot be said to be without basis.

11. Now coming to the question of school building as kuchcha construction having bamboo fencing with tiles shed, as per norms for establishment of schools in terms of the Circular as reproduced above, clearly laid down that the school building should be a pucca structure with well ventilated and specious rooms for holding the classes. Each room must have a floor space of at least 400 sq. ft. So that space may be provided at the rate of 10 sq. ft. per pupil. It further laid down that if it is not possible for the school to immediately provide for a pucca building, the building must have the floor cemented and the walls and the roofs must not be made of inflammable materials and if the roofs are made of C.I. sheets, ceiling with adequate spaces for ventilation should be provided. It also laid down that the building should have a compound of considerable size attached to it, which can be used for a play ground and for outdoor activities of the pupil like gardening, etc. It further laid down that the site, building and other properties of the schools should be vested in the Managing Committee by a Registered Deed of Gift and no school should be held in rented building except, in very exceptional circumstances. If the school is held in a rented building, the building must be leased out to the Managing Committee of the school for a long term. Therefore, these objections also cannot be said to be totally irrelevant, as per the report of the DLIT, that the school building is a kachcha construction with bamboo fencing with tiles shed. This also militates against the requirement laid down by the Board. It is a different matter that such requirement cannot be fulfilled because the area is poverty stricken one. By that it does not mean that the conditions laid down for opening a school is dispensed with. The voluntary organizations who intend to open the school should abide by the provisions and they cannot take the plea that the area is poverty stricken, therefore, such requirement cannot be fulfilled. In fact, by establishing schools in ramshackle places and thereafter seeking recognition cannot be permitted because that would, give rise to a bad practice of commercializing the education. It is no argument to say that instead of not having a school one should suffer the school in a ramshackle fashion, which cannot provide conducive atmosphere to better education. In fact Government is cognizant of the fact and they have issued a circular on 26th April, 1978 not to encourage the voluntary organizations to

establish such kind of school without prior permission of the Government or the Board. This school was established in 1983 despite clear instruction in the circular from the State Government that such schools shall not be permitted to be established without proper sanction of the Board or the State Government. Now after establishing the school without proper infrastructure and without the prior sanction of the Board or the Government, they are knocking on the door of the Court for their recognition so as to get recognition which on the face of it is illegal and we cannot permit them to take benefit of their own illegality to perpetuate it with the seal of this Court and put extra burden on the State exchequer.

12. Our attention is also invited to a Division Bench decision of this Court in the case of *State of West Bengal v. Abdul Kuddus* reported in AIR 2000 Cal 73 wherein it has been observed that non-observance of the circular is not a mandatory one. It is true that the circular is not mandatory but it has been issued by the State as a policy decision and such a policy decision cannot be ignored as non-existent. Ultimately, the liability is to be borne by the State and the State is well within its right to insist that before a school is opened, appropriate consent or instruction should be obtained. Therefore, if the State, in pursuance of their policy decision, finds that the school has been established without prior permission--that can certainly withhold sanction for grant of grant-in-aid. Therefore, the decision given in the case of *State of West Bengal v. Abdul Kuddus* (supra) does not come in our way in the facts and circumstances of this case.

13. It is also observed by the Board that there are 5 class rooms, but in view of the enrolment, the number of rooms are inadequate, that shows that the writ petitioners are only anxious to establish the school as a commercial proposition de-hors the minimum requirement. Sufficient rooms have not been provided for housing the pupils. In 1997-98 the number of students were 232, in 1998-99 there were 238 students, in 1990-2000 there were 240 students and at the time of inspection the inspection team found 208 students present. These numbers are being accommodated in 5 class rooms, that is about 60 students per class room approximately will have to be cramped into 5 small class rooms. This reason also cannot be said to be irrelevant as the ratio of students per class room has been laid down in the circular, which provides that each class room should measure about 400 sq ft.

14. The next objection raised is that teachers have not been appointed in terms of the Government Rules. Earlier also it was clearly mentioned by the Government that before appointing the teachers, the authorities will keep in view the minimum qualification laid down in the Government Rules. If an incumbent is appointed in violation of the Government Rules, the Government cannot be saddled, in the event of recognition, to suffer such illegal appointment. Accordingly, the Government did not recommend the school for recognition because of lack of infrastructure. Therefore, the Recognition Committee of the

Board on the basis of the report of the DLIT, considered the matter u/s 19A(3)(c) (i) of the Act and refused to recognize the school. Therefore, the Board exercised its statutory power given under the Act. Now, the question is can this examination done by a statutory body be said to be actuated with irrelevant consideration. It is a different matter that so many things can be said that according to the ground reality in the villages that it is not possible to have proper infrastructure which has been laid down by the Government. But no fault can be found with the order of the Board as it has acted within its parameter. The Government can lay down parameters for grant or refusing to grant recognition. The grant of recognition is with the Government as the Government will have to extend the financial aid to the school and take an additional burden on the public exchequer. The Government is in a better position to appreciate their financial condition. The Government with the ground reality has laid down these guidelines and the Courts cannot substitute their personal knowledge whether the guidelines are practical or impractical. It is always open for the authorities who finance a particular organization to lay down certain norms and if these norms are not fulfilled then the authorities cannot be saddled with the burden of finances unless the order is arbitrary or violative of Article 14 of the Constitution. Sufficient materials have been placed on record and on the basis of that the statutory authority exercised their discretion u/s 19A(3)(c)(i) of the Act and after examining these norms and other materials on record found that the present school does not fulfill these norms. Then in that case they are well within their right to refuse to grant recognition. We failed to appreciate that with so much of shortcomings, as we have already detailed above, how can the school seek a mandamus to the Board to recognize this school which lacks practically all the norms laid down by the Government. It is a different matter that some recognition has been granted to some other school similarly placed, but that does not provide ground to the petitioner to perpetuate an illegality for all times to come. Those who are espousing the cause of a voluntary organization should abide by the norms laid down by the Government. In the present case despite the circular of the Government dated 26th April, 1978 to the effect that no school shall be opened by any voluntary organization without prior sanction from the Government or the Board, the school authorities in defiance of that circular established the school and it cannot seek recognition with so much of shortcomings so as to saddle the State Government with additional financial liability. Since the establishment of school is against the aforesaid circular issued by the Government, no writ of mandamus can be issued to the Government or the Board to recognize the school.

15. In this connection Mr. Panja, learned counsel for the appellant, has invited our attention to various decisions of the Apex Court as well as of this Court in support of his contention that a school which has been established in derogation of the norms laid down by the State should not be recognised. In this connection reference was made to a decision of the Apex Court in the case of St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and

others, etc. etc., . In this case somewhat similar question arose under the Tamil Nadu Minority Schools (Recognition and Payment of Grants Rules, 1977. In this case also the question was regarding fulfillment of certain conditions laid down in the grant rules. The condition regarding recognition and payment of grants was that the incumbent should have minimum extent of land, sizes of class rooms, cost of library books, number of bathrooms, furniture and equipments, etc. At that time the incumbent was not fulfilling these conditions and their recognition and grant was not made available to the institution. In that context their Lordships held that it is for the State and not for the Courts to determine the requirements of the institutions. It was also observed that Court should not pass interim orders permitting students of the institutions which failed to get recognition due to non-fulfillment of the conditions, to appear in the examinations. Fulfillment of such requirement was held by the apex Court to be a must and it was held that it does not violate Articles 14 and 30(1) of the Constitution. In the present case it is unfortunate that the petitioner has approached this Court for one reason or other and this Court has readily directed the respondents to consider the case for recognition. The fact of the matter is that as per the terms and conditions of recognition, if the incumbent does not fulfill those conditions Courts should not normally interfere and direct recognition or non-recognition of the institution in violation of the norms laid down by the Government/Board. In the present case, as pointed out above, right in 1978 it was clearly instructed by the State Government that no voluntary organization or any other such kind of people will start any institution without prior permission of the Government. Despite that this school was started without prior permission of the Government or the Board and which was found by the Board that the school does not fulfill the conditions, therefore, the Board in exercise of power u/s 19A(3)(c)(i) rightly refused to grant recognition. The view taken by the learned single Judge, in the present case, cannot be sustained.

16. Our attention was also invited to a decision of the Apex Court in the case of Dental Council of India v. Subharti K.K.B. Charitable Trust reported in 2001 (5) SCC . In this case the question was with regard to the recognition of a college. The inspection team inspected and found that the college can be recognized for 60 students but the petitioner filed a writ petition in the High Court and sought a writ of mandamus on the Central Government to accord approval for admitting 100 students instead of 60 students. Their Lordship observed that on the basis of the inspection of the second inspection team looking to the necessary infrastructure the team reported that the existing infrastructure can impart education to 60 students instead of 100 students. Therefore, their Lordships held that normally the report of the expert committee should be accepted and Court should not interfere in such matters. It was observed that Court's jurisdiction to interfere with the discretion exercised by the expert body is limited even though the right to education is concomitant to the fundamental rights enshrined in Part III of the Constitution. It was further observed that the High Court ought not to have passed the order straight away according to the approval despite the

inspection report submitted by the DCI and the order refusing to grant such permission passed by the Central Government. Their Lordships relying on the decision of the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., observed that unless there are proper educational facilities in the society, it would be difficult to meet with the requirements of the younger generation would have a keen desire to acquire knowledge and education to compete in the global market. It was also observed that establishment of educational institutions, Government machinery or funds are neither sufficient nor adequate and the necessity of private institutions cannot be denied. Therefore, their Lordships observed that Courts should not normally interfere with the discretion exercised by the expert bodies in the matter of grant of approval for establishing dental college. In the present case the inspection team after going through the infrastructure of the present school found it to be inadequate and not in accordance with the norms laid down by the Government. Therefore, on the basis of this material the Recognition Committee of the Board in exercise of their discretion u/s 19A(3)(c)(i) of the Act rightly took this decision not to recognize the school.

17. Our attention was also invited to a decision of the Bombay High Court in the case of Gramvikas Shikshan Prasarak Mandal, Sondoli Vs. The State of Maharashtra and others, . In this case in somewhat similar situation the Bombay High Court also has observed that the Government should constitute District Level and State Level Committees and to consider the applications after the report of the District/State Level Committee.

18. Our attention was also invited to a decision of a single Bench of this Court in the case of Jhalu Roy v. State of West Bengal reported in 2000 (3) CLT 391. In this case the learned single Judge having regard to the norms laid down by the Government and after going through various circulars on the subject came to the conclusion that the discretion exercised by the Board cannot be lightly interfered unless it is violative of Articles 14 and 21 of the Constitution. It was observed by the learned single Judge that there is no fundamental right to recognition of any institution and any institution seeking recognition should abide by the regulations prescribed by the State as a condition precedent. This judgment of the learned single Judge was confirmed by the Division Bench of this Court.

19. Our attention was also invited to a Division Bench judgment of this Court in the case of Nabadwip Chandra Das v. West Bengal Board of Secondary Education reported in 1998(1) CLJ 141. In this case the reasons for refusal to grant recognition by the Board of Secondary Education was (a) that application under prescribed form with requisite fees of Rs. 25/-was not sent, (b) that teaching and non-teaching staff were appointed not keeping in view of the staff pattern and (c) that there are two Secondary/ Junior High Schools within the radius of 4/5 km. The Division Bench after considering the matter came to the conclusion that reasons are not relevant for not granting recognition. In the present case, as discussed above, the reasons are germane to the issue and hey cannot be said to

be irrelevant. Therefore, this case does not provide any useful assistance as far as this matter is concerned.

Hence as a result of the above discussion we are of the opinion that the view taken by the learned single Judge is not correct. The appeal is allowed and the order passed by the learned single Judge is set aside. No order as to costs.

Later: 2.5.02

If urgent xerox certified copy of the judgment and order is applied for by the learned counsel for the parties, the same may be made available expeditiously upon compliance with all formalities.

J.K. Biswas, J.

20. I agree.