

Court No. 22
21.9.2022
(Item No. 18)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 21085 of 2022

Jakiur Rahaman
VS
The State of West Bengal & Ors.

Mr. Biswaroop Bhattacharya
Mr. Golam Mohiuddin
Ms. Puja Mondal
..... for the petitioner
Mr. Anubrata Santra
Mr. Md. Galib
..... for the State
Mr. Nadeem Sulaiman
.... For the Madrasah Board

This writ petition assails the impugned order dated August 17, 2022 passed by the second respondent, **Annexure P – 14** to the writ petition, whereunder the prayer for grant of recognition of the **Paniara Junior High Madrasah (for short, the Madrasah)** District – Birbhum was rejected. This matter had a checkered litigation history. The material part of it, relevant for adjudication of this writ petition are narrated.

Pursuant to an order dated April 20, 2022 **Annexure P-13** to the writ petition passed by a co-ordinate Bench in **W.P.A. 4355 of 2022**, the respondent No. 2 was directed to consider the issue on the basis of an inspection report dated December 10, 2018 prepared by the concerned **District Level Inspection Team (for short, DLIT), Annexure P-7** to

the writ petition. On the basis of such direction the impugned order was passed.

From a true and harmonious construction of the relevant statutory Rules namely, **West Bengal Board of Madrasah Education (Recognition of unaided Madrasah) Regulations, 2010 (for short, 2010 Regulation)**, it appears that, when an application for recognition of an unaided Madrasah is made, an inspection is required to be carried out in respect of such Madrasah, to come to a conclusive finding on the basis of fact finding enquiry that the subject Madrasah qualifies all the necessary criteria to have the recognition from the Board. The 2010 Regulation also provides that the inspection and report thereof shall not confer any right of recognition to the unaided Madrasah seeking recognition. The said DLIT report dated December 10, 2018, **Annexure P-7** to the writ petition recorded all the factual findings upon necessary enquiry being caused by the DLIT in respect of the said Madrasah and finally a recommendation was proposed in the said report for approval by the DLIT. The observations made and the finding arrived at in the said DLIT report was never taken into any exception and the petitioner did not challenge the same. The said DLIT report had attained its finality. On the basis of said DLIT report the impugned order was passed.

Mr. Biswaroop Bhattacharya, learned counsel appearing for the writ petitioner submitted that, on a close perusal of the said DLIT report it would be evident that whatever fact finding observation was made thereunder, finally the said report suggested a recommendation for approval of the relevant Madrasah. According to him, the said DLIT report did not contain any significant disqualification or deficiency for which the said Madrasah could be denied of its recognition. Referring to Regulation 8 of the said 2010 Regulation Mr. Bhattacharya submitted that, the respondent no. 2 could have granted a provisional recognition since there was no significant disqualification or discrepancy appeared or mentioned in the said DLIT report. The disqualifications even if, were mentioned in the said DLIT report, those were curable in nature and were of not so fatal in nature that the prayer for recognition could be rejected.

Mr. Bhattacharya, further submitted that, the respondent no. 2 had failed to exercise his discretion by passing the impugned order and could have directed to cure the deficiencies, if at all, found by him from the said DLIT report and could have granted the recognition subject to removal of such deficiencies. The impugned order was a result of an irrationality. The impugned order in such factual matrix should be set aside and prayer for recognition of the Madrasah may be considered by this Court.

Mr. Nadeem Sulaiman, learned counsel appeared for respondent nos. 3, 4 and 6 referring to the various regulations under the said 2010 Regulation submitted that, the DLIT report should be considered in its true and proper perspective in its entirety and not in a piecemeal manner. On a close perusal of a DLIT report, it would be evident that, there were several deficiencies on the part of the Madrasah and as a result it could not have complied with the terms and conditions under which an approval could be granted. Merely a statement ***“recommended for approval”*** as would appear from the said DLIT report would not suffice for the Madrasah to receive an approval which otherwise was not qualified for the same. The discretion of the authority should be exercised considering all facts and circumstances and the said DLIT report in its entirety. The DLIT report suggested several deficiencies on the part of the Madrasah. The finding of the DLIT report was never challenged by the petitioner. The petitioner is bound by the said finding of the DLIT report.

In such circumstances, the learned counsel submitted that, this writ petition is devoid of any merit as the impugned order was just, proper and lawful. He submitted that, there was no infirmity in the said impugned order and as such the Court should not interfere with the same.

Md. Galib, learned counsel appears for the State. He adopted the submissions made on behalf of the respondent nos. 3, 4 and 6 made by Mr. Sulaiman. He also submitted that the impugned order rejecting the approval for recognition of the Madrasah was just and lawful and the same should not be interfered with.

After considering the rival submissions made on behalf of the appearing parties and on perusal of materials on record, it appears to this Court that, the said DLIT inspection report was not challenged by the petitioner. It is true that the said DLIT report may not have a binding effect while deciding finally the issue of recommendation for approval of the Madrasah but definitely has a persuasive value because facts to be considered for granting approval were depended on several factual enquiries, which were made available in the said DLIT report after causing necessary fact finding enquiry.

This Court in exercise of its high prerogative jurisdiction in judicial review while assessing the said impugned order, has a limited authority. This Court will look into the decision making process while the said impugned order was passed and of course, if there is any glaring perversity on the face of the impugned order, this Court will intervene.

On a close scrutiny of the said impugned order, this Court is of the considered view that, the same

was in sync with the fact finding observations appearing in the said DLIT report. The facts on which enquiry was conducted and DLIT report was submitted were relevant under the statute for consideration while granting approval for recognition of a Madrasah. The fact finding enquiry as would appear from the said DLIT report on the basis whereof the impugned order was passed would further reveal that the relevant facts which were to be considered for approval of the Madrasah were found to be deficient on the part of the said Madrasah and as such the said Madrasah did not qualify for receiving any approval for recognition from the Madrasah Board. The impugned order proceeded thoroughly on the basis of the said fact finding enquiry as would appear from the said DLIT report. Sufficient reasons are also available in the impugned order as to why approval was rejected. There is no perversity on the face of the impugned order. There is no infirmity either on fact or in law in the said impugned order. The impugned order was passed upon due consideration of all relevant facts needed to be considered in accordance with law for granting recognition to a Madrasah.

In view of the foregoing discussions and reasons the said **order dated August 17, 2022, Annexure P-14 to the writ petition does not call for any interference and accordingly the same stands affirmed.**

However, this order shall not preclude the Madrasah to take steps, strictly in accordance with law.

On the above terms, this writ petition being **W.P.A. 21085 of 2022** stands dismissed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)