

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble Justice T. S. Sivagnanam
and**

The Hon'ble Justice Hiranmay Bhattacharyya

FMA 1923 of 2018

The State of West Bengal & ors.

vs.

**The MNG Comm., Dakshin Mahisda Adarsha Siksha Niketan &
ors.**

For the Appellants : Mr. Tapan Kumar Mukherjee,
learned Senior Advocate
Mr. Pinaki Dhole
Mr. Abhishek Prasad
.....advocates

For the Respondents : Mr. Swagata Datta
.....advocate

For the WBBSE : Mr. Santanu Kr. Mitraadvocate

Heard on : 13.01.2023

Judgment on : 07.02.2023

Hiranmay Bhattacharyya, J.:-

1. This appeal is at the instance of the State of West Bengal and is directed against an order dated 09.03.2017 passed by a learned Single Judge in WP 28791 (W) of 2014. By the impugned order the learned Single Judge after setting aside the order of the Assistant

Secretary, Finance Department dated 26.09.2014 directed the said authority to take a reasoned decision as to whether financial assistance should be given to the school.

2. The facts giving rise to this appeal in a nut shell are as follows:-
3. West Bengal Board of Secondary Education (for short “the Board”) granted recognition to Dakshin Mahisda Adarsha Siksha Niketan (for short “the school”) as a four class junior high school. Challenging the order of the learned Single Judge dismissing the writ petition being WP No. 19342 (W) of 2010 wherein the order of the authority refusing grant-in-aid was challenged, the managing committee of the school preferred an appeal and the Hon’ble Division Bench granted liberty to the school to apply afresh before the concerned authority. Pursuant to such liberty, the Secretary of the School applied before the Principal Secretary, School Education Department praying for grant in aid in favour of the school. Such prayer was rejected by the Secretary, School Education Department by an order dated 03.06.2013 which was again challenged by the Managing Committee of the school as well as its teaching and non-teaching staff in WP 22339 (W) of 2013. The learned Single Judge by an order dated 26.11.2013 directed the Finance Secretary to take a fresh decision upon giving an opportunity of hearing to the writ petitioner. Pursuant to the said order dated 26.11.2013 passed in WP 22339 (W) of 2013, the Assistant Secretary, Finance Department by an order dated 26.09.2014 rejected the said application. The said order of the

Assistant Secretary dated 26.09.2014 was challenged by the managing committee of the school in the present writ petition being WP 28791 (W) of 2014 and the learned Single Judge by the impugned order after setting aside the said decision dated 26.09.2014 directed the said authority to pass a reasoned decision as to whether financial assistance should be given to the school.

4. Being aggrieved against the order dated 09.03.2017 passed in WP 28791 (W) of 2014 this appeal has been preferred.
5. Mr. Mukherjee, learned Additional Government Pleader appearing for the State submitted that the Government is not bound to grant aid to all recognized institutions. In support of such submission he referred to the order passed by a Hon'ble Single Judge on 20.05.2005 in WP no. 2184 of 2004. He further drew the attention of this Court to the order of the Hon'ble Division Bench of this Court in MAT 871 of 2011 passed on 15.03.2013 wherein the Hon'ble Division Bench held that grant in aid cannot be claimed as a matter of right and it is for the State Government to take a decision. He submitted that the Assistant Secretary of the Finance Department after taking into consideration all aspects has observed that the State Government is not in position to take an additional burden of paying the salary of teaching and non-teaching staff of the school. He also submitted that the learned Single Judge did not take into consideration the aforesaid facts while passing the impugned order.

6. Mr. Datta learned advocate representing the respondent school submitted that pursuant to the liberty granted by the Hon'ble Division Bench in MAT 871 of 2011 the managing committee of the said school submitted a representation before the Principal Secretary, School Education Department stating that it is difficult to run the school without grant in aid and the staffs are rendering their services without financial benefits. He further submitted that since the school was recognized, State is duty bound to grant financial assistance. He, thus, submitted that the learned Single Judge was perfectly justified in setting aside the order dated of the Assistant Secretary, Finance Department dated 26.09.2014 and for reconsideration of the matter. He also relied upon a decision of the Hon'ble Supreme Court of India in the Special Leave to appeal (Civil No. 27804 of 2019) in the case of *Prabir Kumar Ghosh vs. State of West Bengal and Ors.* passed on 06.05.2022 in support of his contention.
7. Heard the learned advocates for the parties and perused the materials placed.
8. Challenging the action of the Board in not granting recognition to the school, the managing committee of the school filed a writ petition being WP No. 2184 of 2004. The said writ petition was disposed of by an order dated 20.05.2005 directing the appropriate authority of the Board to take a decision on the application of the petitioner for recognition of the school after giving opportunity of hearing to the petitioner and other concerned persons. The Hon'ble

Single Judge was, however, pleased to hold that aid and recognition are different issues and the Government is not bound to grant aid to all recognized institutions. It was further held therein that an application for aid is to be considered on its own merits having regard to all relevant factors including the financial capacity of the government to take on the additional burden of aiding the school.

9. Thereafter, the executive committee of the Board unanimously resolved that the school be granted recognition as a four class junior high school without finance. The order dated 20.05.2005 passed in WP No. 2184 of 2004 was not challenged by the writ petitioner school before the higher forum and therefore, the findings recorded therein attained finality. That apart the said order was given effect to by the State by granting recognition to the school as a four class junior high school. Such recognition was, however, without finance.
10. The order of recognition of the school as a four class junior high school without finance is not the subject matter of challenge in this writ petition. The order granting recognition without financial aid was accepted by the petitioner and the petitioners have also enjoyed the benefits of the order of such recognition and is, therefore, estopped from contending that the State is bound to grant financial assistance to the petitioner institution. That apart the learned Single Judge relied upon an unreported decision of another learned Single Judge in WP 13249(W) of 2013 (*Md. Aktaruzzaman & Ors. vs.*

State of West Bengal & Ors.) decided on November 28, 2013 wherein it was held that recommendation without financial aid is really unsustainable. The said finding is, however, contrary to the finding of the learned Single Judge in the order dated 20.05.2005 in WP 2184 of 2004 wherein it was observed that Government is not bound to grant aid to all recognized institutions. The aforesaid observation of the learned Single Judge in the order passed in the case of *Aktaruzzaman* (supra) is also contrary to the observation of the Hon'ble Division Bench in its order dated 15.03.2013 in MAT 871 of 2011 wherein it was observed that grant in aid cannot be claimed as a matter of right. The issue of grant of recognition without financial aid was not the subject matter of the writ petition from which the instant appeal arose. The said issue being already a settled issue inter parties has already attained finality. Such settled position could not have been unsettled by placing reliance upon the decision of *Aktaruzzaman* (supra).

11. The Assistant Secretary of the Finance Department in its order dated 26.09.2014 rightly took note of the aforesaid observations of the Hon'ble Single Judge of this Court in the order dated 20.05.2005 in WP No. 2184 of 2014; the observation of the Hon'ble Division Bench in the order dated 15.03.2013 in MAT 871 of 2011; the financial aspect that the State Government is not in a position to take on the additional burden of the teaching and non-teaching staff of the school and that at the time of granting recognition it was made clear that the school was being recognized without financial

assistance. The said respondent authority also took note of the prevailing rules that the appointment to the government aided schools are to be made pursuant to the recommendation of the School Service Commission followed by due recruitment procedure and if a person is appointed in a recognized aided institution without being recommended and by the concerned Regional School Service Commission then such appointment would be violative of the legislative mandate contained in Section 9 of the West Bengal School Service Commission Act, 1997.

12. The petitioner nos. 3 to 8 herein who are the respondent nos. 3 to 8 in this appeal claimed to be the teaching staffs of the school. The writ petitioner nos. 9 and 10 who have been impleaded as respondent nos. 9 and 10 in this appeal claimed to be the non-teaching staffs of the school. Though the said writ petitioners/respondents herein claimed to be performing their duties as teaching and non teaching staffs respectively but they have not disclosed the date when they were appointed and the manner how they have been appointed in the said school. The petitioners have prayed for according approval of their appointment in the said school and for granting financial assistance to the school. It does not appear from the order passed by the Finance Department as well as from the writ petition that documents in support of their appointment have been produced either before the concerned respondent authority or before the writ court. The Assistant Secretary, Finance Department rightly took note of the

decision of the constitution bench of the Hon'ble Supreme Court of India in the case of *Secretary, State of Karnataka & ors. vs. Umadevi & ors.* reported at (2006) 4 SCC 1 while arriving at the finding that the teaching and non-teaching staffs of the school do not have any legal right to be regularized in service if their appointment was not in accordance with the recruitment rules. The writ petitioner being the teaching and non-teaching staffs of the school also could not satisfy this Court that they were appointed against sanctioned posts by following the rules governing the recruitment in such school. The petitioners failed to demonstrate even before this Court that they have a right to claim approval of their service. The writ petitioners/respondents herein have claimed financial assistance from the government on the ground that they are rendering service for the benefit of the students. Since the petitioners have failed to make out any case for approval of appointment, the State Government cannot be fastened with the burden of paying the salary of teaching and non- teaching staff of the school.

13. The petitioners did not plead the basic facts in support of their claim for approval of their appointment. In view thereof, the Hon'ble Judge of the writ court could not have passed any direction upon the respondent authority to examine the matter and to arrive at a positive finding in the manner as directed in the impugned order.
14. After going through the said decision of the Principal Secretary of the Finance Department this Court finds that cogent reasons have been assigned in support of the ultimate conclusion. After going

through the order of the Principal Secretary dated 26th November, 2014, this Court is of the considered view that there is no infirmity in the decision making process warranting interference by the writ Court in exercise of the powers of judicial review. The order of the Hon'ble Single Judge is liable to be quashed.

15. The issue involved in order of the Hon'ble Supreme Court in the case of *Prabir Kumar Ghosh* (supra) was with regard to approval of the appointments of the writ petitioners therein on the basis of a factual finding that the engagement of the writ petitioners cannot be said to be illegal. The said decision is being distinguishable on facts is, therefore, not applicable to the facts of the case on hand.
16. For all the reasons as aforesaid this Court, therefore, holds that the impugned order suffers from infirmity and the same is accordingly set aside and quashed. The appeal stands allowed. The writ petition thus, stands dismissed. Consequently, the order of the Assistant Secretary, Finance Department, Government of West Bengal dated 26.09.2014 stands restored.
17. There shall be, however, no order as to costs.
18. Urgent photostat certified copy of this judgment be given to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)