

03.07.2023

**FMA 330 of 2022
With**

CAN 1 of 2022

**Kaimari Junior High School & Anr.
-Vs-
State of West Bengal & Ors.**

Mr. Pratik Dhar
Mr. Asim Hati
Mr. Debabrata Mondal

... for the Appellants

Ms. Koyeli Bhattacharyya

... for the Board

Mr. Pinaki Dhole
Mr. Pinaki Bhattacharya

... for the State

Party/Parties is/are represented in the order of
their name/names as printed above in the cause title.

A short issue raised in this appeal by Mr. Dhar,
Learned Senior Counsel, appearing with Mr. Mondal
and Mr. Hati, Learned Counsel, relates to the claim of
the School-in-issue/the appellants herein to receive
financial aid from the State Government. The School-
in-issue claims to be recognised by the West Bengal
Board of Secondary Education (for short, the Board)
and is presently facing stringency on account of lack of
financial aid.

Mr. Dhar makes the point that since the School-
in-issue caters to the children of a remote rural
population, having regard to the constitutional

mandate imposed by the right to education for children, the State is under an obligation to provide financial aid in appropriate cases to recognised schools.

Mr. Dhar relies upon the decision of a concurrent Hon'ble Division Bench in MAT 557 of 2020 by which, *inter alia*, on the basis of the discussion in its Judgment and Order dated 17th March, 2023, the Hon'ble Division Bench was pleased to refer the matter for appropriate consideration to the Principal Secretary, School Education Department, State of West Bengal.

Mr. Dhar prays for an identical relief at this stage.

Mr. Bhattacharya, Learned Counsel appearing for the State-respondents led by Mr. Dhole, Learned Counsel, submits that the Principal Secretary is yet to consider the matter as directed by the concurrent Hon'ble Division Bench *vide* its Judgment and Order dated 17th March, 2023.

Ms. Bhattacharya, Learned Senior Counsel appearing for the Board, submits that the decision rendered in MAT 557 of 2020 (*supra*) is subject to further challenge and further appropriate instructions on such further challenge is awaited.

Having heard the parties and considering the materials placed up to this stage, this Court finds that

the ends of justice will be served at this stage in the event a similar direction is granted in this appeal by directing the Principal Secretary, School Education Department, to consider the matter independently on merits.

However, at the time of consideration this Court makes the following observations. First, the prayer for financial aid cannot be an *alibi* for benefits to be extended to organised teachers and any issue which stands judicially settled is not a subject to be reopened.

Second, the Principal Secretary, School Education Department, requires to be also guided by the extant statutory provisions which is the Control of Expenditure Act, 2005 and other statutes, as applicable.

Third, the Principal Secretary requires to keep in mind the constitutional mandate connected to imparting of free and compulsory education provided by Article 21A of the Constitution of India also by the Right of Children to Free and Compulsory Education Act, 2009.

The Principal Secretary shall grant an opportunity of hearing to the appellants/the School-in-issue represented by their authorised representatives and other stakeholders.

FMA 330 of 2022 along with **CAN 1 of 2022**

stand **disposed of** accordingly.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)