

S/L 62
02.05.2023
Court. No. 12
Sourav

WPA 18348 of 2018

**Smt. Kuheli Das & Ors.
Vs.
The State of West Bengal & Ors.**

*Mr. Ekramul Bari
Mr. Syed Mansur Ali
Ms. Tanuja Basak
Sk. Imtiaj Uddin*

...for the petitioners.

*Mr. Pinaki Dhole
Mr. Avishek Prasad*

...for the State.

1. Both the writ petitioners and the respondent/State are represented by their respective learned advocates.
2. The instant writ petition is now taken up for hearing.
3. Heard Mr. Bari, learned advocate for the writ petitioners in support of the writ petition at length and also heard Mr. Dhole, learned advocate for the State against the writ petition.
4. The instant writ petition is now taken up for passing appropriate order.
5. In this writ petition as filed under Article 226 of the Constitution of India, the writ petitioners have prayed for cancellation of the order vide no. 580-SE(L)/SL/5S-68/05 dated 07.06.2018 as passed by the Principal Secretary, School Education Department, Government of West Bengal, whereby and whereunder the request of the present writ petitioners to grant aid to the Durmuth Chandberia Adarsha Vidyapith, Village- Chandberia, P.O. Contai

P.S. Marisda, District - Purba Medinipur, Pin- 721401
has been declined.

6. In support of the instant writ petition, Mr. Bari, learned advocate for the writ petitioners at the very outset draws attention of this Court to the page no. 56 and page no. 57 of the instant writ petition being Annexure – P-1 to the writ petition. It is contended that by an order dated 16.02.1999, recognition was granted to the aforementioned school as a Class-X High School with effect from the year 1999 without any financial assistance and that such recognition was given on behalf of the West Bengal Board of Secondary Education who is, however, not a party to the instant writ petition. Mr. Bari, learned advocate for the writ petitioners in course of his submission also draws attention of this Court to the impugned order itself. It is submitted by Mr. Bari, learned advocate for the writ petitioners that the logic as given in the impugned order is not coherent with the prevailing law of the land and, therefore, the same is required to be set aside.
7. Placing reliance upon the judgments as passed by this Hon'ble Court in different writ petitions in between the same parties, it is contended by Mr. Bari, that in the said judgments, it has been clearly indicated by this Hon'ble Court that the Government is obliged to grant to the aid schools to the extent possible. Drawing attention to the Annexure – P-5 of the instant writ petition, it is submitted by Mr. Bari that

while disposing APO No. 293 of 2005 with WP No. 313 of 2005, it has been decided by a Division Bench of this Court that it is the obligation of the State to take every possible steps to provide grant-in-aid in appropriate cases within its financial aids.

8. It is thus argued by Mr. Bari, learned advocate for the writ petitioners that while passing the impugned order, the respondent no. 2 being the Principal Secretary to the respondent no. 1 authority did not at all consider the parameters for grant-in-aid in favour of the aforementioned school and on account of such inaction or non-action on the part of the respondent authorities, the constitutional mandates as provided under Article 21 and Article 21A of the Constitution of India have been violated. Mr. Bari, thus submits before this Court that the instant writ petition may be allowed cancelling the impugned order dated 07.06.2018 with a further direction upon the respondent authorities to grant aid in favour of the aforementioned school. Mr. Bari in support of his contention places his reliance upon a reported decision namely, ***Jitendra Nath Barman Vs. State of West Bengal***, reported in ***2019 SCC Online Cal 533 : (2019) 3 CHN 93***.
9. Mr. Bari, learned advocate for the writ petitioners, in course of his argument strongly contended that grant of recognition of a school without financial assistance is a farce and the same is also violative to right to

education under Article 21A of the Constitution of India.

10. *Per contra*, Mr. Dhole, learned advocate for the respondent/State also places his reliance upon the impugned order. In course of his submission, Mr. Dhole, learned advocate for the State/respondent also draws attention of this Court to the provision of Section 6 of the West Bengal Schools (Control of Expenditure) Act, 2005 hereinafter referred to as the 'said Act of 2005' in short. Drawing attention to the prayer portion of the instant writ petition, it is contended by Mr. Dhole, that in the instant writ petition the *vires* of Section 6 and/or any other sections of the said Act of 2005 has not been challenged and in view of such, the present writ petitioners are debarred from getting the reliefs as prayed for. Mr. Dhole further submits before this Court that the impugned order dated 07.06.2018 is in consonance of Section 6 of the said Act of 2005 and, therefore, there cannot be any justification to interfere with the impugned order dated 07.06.2018.
11. In reply Mr. Bari, submits before this Court that the said Act of 2005 has got no retrospective effect and since the recognition of the aforementioned school was granted in the year 1999, the respondent authorities cannot use the said Act as a shield to deny the claim of the present writ petitioners.
12. This Court has meticulously gone through the entire materials as placed before this Court. This Court has

also given its anxious consideration over the submissions of the learned advocates for the contending parties. It is undisputed that in the year 1999, recognition was granted in favour of the aforementioned school, where the present writ petitioners are working by the West Bengal Board of Secondary Education and while granting such recognition, it has been made clear that such recognition has been granted without any financial assistance since the Government is the finance grant authority.

13. After considering the rival submissions of both the parties, the moot questions cropped up before this Court as to whether a recognized school is within their right to receive financial aid from the Government or not. In order to arrive at a logical conclusion of the instant case, this Court proposes to look to the Section 6 of the Said Act of 2005 and the same is reproduced hereinbelow in verbatim:

“6. Unaided school not to get financial assistance.- No unaided school shall be entitled to get any financial assistance from the State Government.”

14. On perusal of the aforesaid Section of the Act of 2005, it reveals to this Court that the legislature in its own wisdom while enacting the said Act of 2005, made it clear that no unaided school is entitled to get any financial assistant from the State Government. Admittedly in the year 1999, the aforementioned

school was granted recognition but in view of the provision of Section 6 of the said Act of 2005, the said school cannot seek grant as of right.

15. In considered view of this Court, the decision as taken by a Division Bench of this Hon'ble Court while disposing APO No. 293 of 2005 with WP No. 313 (W) of 2005 as has been annexed with the mark Annexure – P-5 is not in favour of the present writ petitioner since in the said judgment dated 04.05.2007, the Hon'ble Division Bench expressed the following view:

“At the time of recognition of the State it was made clear that the Scschool was to be treated as un-aided institution. Aided schools are those which receive financial assistance for payment of basic pay to the teacher and non-teaching staff of the school. Well appraised of its rights and responsibilities, the school authorities went ahead with their programme of disseminating education among the weaker segments of the society. It cannot at this stage insist on the State assuming its financial responsibility for imparting education.”

16. In course his argument of Mr. Dhole, learned advocate for the State/respondent places his reliance upon a judgment dated 007.02.2023 as passed in ***FMA 1923 of 2018 (The State of West Bengal & Ors. Vs. The MNG. Comm., Dakshin Mahisda Adarsha Siksha Niketan & Ors.)***. In the decision of the ***MNG. Comm., Dakshin***

Mahisda Adarsha Siksha Niketan & Ors. (Supra) a Division Bench of this Hon'ble Court expressed the following view:

“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)."

17. In considered view of this Court, the reported decision of ***Jitendra Nath Barman (Supra)*** as cited from the side of the writ petitioners are of no avail to the present writ petitioners since in the said reported decision, nowhere it has been stated that an unaided recognized school is entitled to grant-in-aid as of right in contravention of Section 6 of the said Act of 2005. On the contrary, it appears to this Court that the view taken in the reported decision of the MNC Comm. (Supra) is squarely applicable to the case wherein it has been specifically held the recognized unaided school cannot insist the State to assume its financial liability.
18. In view of the discussion made hereinabove and in view of clear bar of Section 6 of the said Act of 2005, this Court finds that the present writ petitioners cannot claim as of right the grant-in-aid of the Government for the aforementioned school.

19. In considered view of this Court, the instant writ petition being **WPA 18348 of 2018** is thus devoid of any merit and is, thus, dismissed.
20. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)