

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present :- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Mr. Justice Biswaroop Chowdhury

MAT 557 of 2020

The State of West Bengal and Ors.

Vs.

Sri Sushil Khan & Ors.

For the Appellants :- Mr. Tapan Kumar Mukherjee,
Mr. Tapas Kumar Dey, Advs.

For the Respondents :- Mr. Kamalesh Bhattacharjee,
Md. M. Sk.

For the WBSSE :- Ms. K. Bhattacharyya, Adv.

Judgment On : - 17.03.2023

I. P. MUKERJI, J.:-

In 1992 the villagers in or around the area covered by P.S- Joypur in the district Howrah decided to set up a junior high school which would be named Shibgachia Junior High School, having Classes V and VI. The person behind this mission was one Dr. Durgapada Patnayak. An organizing committee was formed in which Dr. Patnayak was elected as Secretary. Thereafter, both teaching and non-teaching staff of the school were recruited. The school started functioning on 2nd May, 1992 from a rented house. On 2nd May, 1996, one Gandhi Charan Deria gifted a plot of land to the school. It also received donations to run it.

After the school became functional, on 31st May, 1994 the Committee applied for its recommendation as a junior high school (co-educational) to the Director of School Education, a copy of which was forwarded to the Secretary, West Bengal Board of Secondary Education.

The Managing Committee on 10th June, 1994 took a resolution to upgrade the school to Class IX and X.

On the date of presentation of the writ application, the school had thirteen assistant teachers, one clerk, one matron and two class four staff. It is housed in a two storied building having ten rooms. From the donation received by it, it has opened an account with term deposit with Allahabad Bank, Jhikira branch. The name of the school was changed from Shibgachia Junior High School to Shibgachia Dr. Tinkari Pattanayak Siksha Niketan.

After several rounds of litigation, orders passed therein and contempt proceedings, inspection of the school by the district level inspection team was initiated.

By a notification dated 19th October, 2013, the Secretary, West Bengal Board of Secondary Education communicated the recommendation of the Board to the state government for upgradation of the junior high school to Class X high school without any kind of financial aid.

It appears that on 24th April, 2013 in a writ application [WP 16607(W) of 2004] (WPCRC 44 of 2013) Sri Murari Mohan Khan and Ors. vs. State of West Bengal and Ors., this court directed the Board to render a decision whether financial aid should be granted to the school. By a decision dated 22nd October, 2013 it disposed of the matter by stating that it was empowered to grant recognition of schools on the recommendation of the School Education Department under the bye-laws 2007 but had no power to recommend or grant financial aid to an institution.

The Board should have stopped at that. It went on to rule that the petitioner's prayer for financial assistance was rejected.

This decision of the Board was challenged in the instant writ application.

The respondent state affirmed an affidavit-in-opposition on 10th March, 2021. It filed it further to the leave granted by a division bench of this court on 3rd February, 2021.

It made the following statements in the said affidavit:-

- a) Under Section 6 of the Right of Children to free and compulsory Education Act, 2009, the appropriate government and local authority are bound to establish schools. In the neighbourhood of the said school there are three aided primary schools and three aided secondary schools in which the local children can get satisfactory education.
- b) Section 2(n)(4) read with Section 3 of the said Act provides that unaided schools recognized but without any financial aid are obliged to provide free education to children from the age of six years to fourteen years of age.
- c) The said school has not provided any information to the government with regard to the minimum qualification possessed by its teachers as required under the said Act.
- d) Under Section 6 of the West Bengal Schools (Control of Expenditure) Act, 2005, an unaided school is not entitled to financial aid, as a matter of right.
- e) No documents have been produced to show that the unaided school was set up after taking approval from the government with regard to its constitution.

By a judgment and order dated 8th July, 2019 the writ application was allowed by a learned single judge of this court quashing the decision dated 22nd October, 2013 of the Board refusing to grant financial assistance to the school. A writ of mandamus was issued commanding the government to grant financial aid to the school.

DISCUSSION:-

A new dimension to the right to receive education was added by insertion of Article 21A to the Constitution of India, by the Constitution (86th amendment) Act, 2002 with effect from 1st April, 2010, by recognizing it as a fundamental right. It provided that the state shall provide free and compulsory education to all children from the age of six to fourteen years in such manner as the state may by law determine.

To give effect to this constitutional mandate, the Right of Children to Free and Compulsory Education Act, 2009 and the Right of Children to Free and Compulsory Education Rules, 2010 were promulgated.

The appellant state has taken the technical point that it is not obliged to provide financial assistance to an institution merely because it has recognized it. Recognition is made by the Board on the recommendation of the state government. The grant of financial aid is in the discretion of the government.

Now, the exercise of this discretion of the government has been regulated by Article 21A and greatly limited by it. By the duty of providing free education to children between 6 and 14 years of age, it is implied that those schools where the children in that age group get free education should be aided, because a free school without aid is unable to pay for its teaching and non-teaching staff. In its affidavit-in-opposition the state has tried to contend that since there is a number of aided schools in the same neighbourhood, it would not aid this school. It is partially justified to say that within a particular geographical area it would only aid a specified number of schools and not extend it to each and every applicant for aid. This is undoubtedly a reasonable approach considering the financial paucity faced by this government and other governments. Otherwise, anybody setting up a school would come up asking for financial aid.

However, the Supreme Court in the case of **State of Uttar Pradesh & Ors. Vs. Pawan Kumar Divedi & Ors.** reported in **(2014) 9 SCC 692** has formulated certain principles to be applied by the executive and the judiciary in its interpretation and enforcement of Article 21A of the Constitution. It has recognized junior high schools of three kinds:-

“Further, the recognized Junior High Schools can be of three kinds:

- i) *Having Classes I to VIII i.e. Classes I to V (Junior Basic School) and so also Classes VI to VIII (Senior Basic School)*
- ii) *A school as above upgraded to High School or intermediate standard and;*
- iii) *Classes VI to VII (Senior Basic School) initially with no Junior Basic School (Classes I to V) being part of the said school.”*

Therefore, a school upgraded to high school level, is still to be described as junior high school. According to this judgment, if such a school has been recognized and children upto the age of 14 years are admitted into it and pursuing their studies there, under Article 21A of the Constitution, the government is obliged to provide financial aid to the institution.

The above dictum was also laid down in **State of H.P Vs. H.P State Recognised & Aided Schools Managing Committees & Ors.** reported in **(1995) 4 SCC 507** where the Supreme Court opined that the State was obliged to provide free education to children even in high school and senior secondary schools which had children upto 14 years of age. Free education could only be provided if the school was aided.

The board has taken the view that it has no power to recommend or grant financial aid to an institution. It has the power on the recommendation of the school education department to recognize the institution only. It has granted upgradation of the school as a “Class X” high school and recognized it.

Now, according to due procedure the unaided and unrecognized school in question was inspected by the government. Every part of its constitution, infrastructure, set up, functioning and management inspected by it.

Thereafter, the school has been recognized by the Board. The school has students who are not above 14 years of age.

Education upto the age of 14 years has to be free and to be provided by the state by suitably aiding a recognized institution.

Hence the government could not deny financial aid to Shibgachia Dr. Tinkari Pattanayak Siksha Niketan. The extent to which the school would be aided would depend on the presence of students' upto the age of 14 years in the school.

In those circumstances, we dispose of this appeal by referring the matter to the Principal Secretary, Education Department to take a decision within eight weeks of communication of this order with regard to the financial aid to be granted by the state government to Dr. Tinkari Pattanayak Siksha Niketan, in accordance with Article 21A of the Constitution of India, the Right of Children to Free and Compulsory Education Act, 2009 read with the Right of Children to Free and Compulsory Education Rules, 2010, the two decisions of the Supreme Court reported in **State of Uttar Pradesh & Ors. Vs. Pawan Kumar Divedi & Ors.** reported in (2014) 9 SCC 692 and **State of H.P. Vs. H.P. State Recognised & Aided Schools Managing Committees and Ors.** reported in (1995) 4 SCC 507 and our observations.

The Principal Secretary shall take the decision upon hearing the necessary parties and by a reasoned order.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(BISWAROOP CHOWDHURY, J.)

(I. P. MUKERJI, J.)