

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 8001 of 2014

With

W.P.A 8004 of 2014

Reserved on : 19.04.2024

Pronounced on: 26.06.2024

Md. Manjur Alam

...Petitioner

-Vs-

The State of West Bengal & Ors.

... Respondents

&

Monsur Hossain

...Petitioner

-Vs-

The State of West Bengal & Ors.

... Respondents

Present:-

Mr. Mansoor Alam

Mr. Alope De Chowdhury

... for the Petitioners

Ms. Tapati Samanta

Mr. Arindam Ghosh

...for the State

Rajarshi Bharadwaj, J:

1. The instant writ applications has been analogously preferred by the writ petitioners herein one Md Manjur Alam, Secretary of the Managing Committee of one Fatepur Darus Salam Senior Madrasah in Fatepur, Murshidabad

(hereinafter referred to as Madrasah), in WPA No. 8001 of 2014 and one Monsur Hossain, Secretary to the Managing Committee of Sakatara Senior Madrasah in Khidirpur, Murshidabad (hereinafter referred to as Madrasah) in WPA No. 8004 of 2014, challenging inter alia an order dated 11.12.2013 issued by Secretary of Minority Affairs and Madrasah Education Department, Government of West Bengal herein respondent No.1 refusing to approve the conversion of the Madrasahs to Madhyamik Siksha Kendra (Senior Madrasah Type).

2. The facts of the case are that Memorandum bearing No 130-JS(MD)/09 dated 15.12.2009 was issued by respondent No.1 setting forth guidelines for approval of certain educational institutions as Madhyamik Shiksha Kendra (Senior Madrasah Type) under the Minority Affairs and Madrasah Education Department, Government of West Bengal. The petitioners submitted applications containing particulars of the Madrasah, a co-educational institution established on 02.02.1998 and 19.12.1998 respectively with medium of instruction being Bengali-Arabic for converting the institution into Madhyamik Siksha Kendra (Senior Madrasah Type) on 30.12.2009 and 15.12.2009 respectively. A supplementary inspection form was also presented by the petitioners to respondent No.1 on 23.07.2010 and 24.07.2010 respectively.

3. The Director of Madrasah Education, West Bengal herein respondent No.2 vide order dated 18.02.2011 being Memo No. 233-ME approved the conversion of twenty Senior Madrasahs (Bengali Medium) into Madhyamik Siksha Kendra (Senior Madrasah Type) and sanctioned the setting up of three hundred Madhyamik Siksha Kendras. The Madrasahs were not found to be eligible for conversion into Madhyamik Siksha Kendra.

4. The petitioners challenging the approval list, preferred writ petitions being W.P No 2361 (W) of 2013 and W.P. No. 2369 (W) of 2013 respectively. The writ petitions were allowed vide an order dated 09.07.2013 and

10.07.2013 respectively by the Learned Single Judge and respondent No.1 was directed to take a decision in the matter by passing a reasoned order in accordance with law within a period of two months from date of communication of order.

5. Thereafter, the prayer of the petitioners for recognition of the Madrasah as Madhyamik Siksha Kendra (Senior Madrasah Type) was rejected by respondent No.1 by order dated 11.12.2013 vide Memo No. 2245-MD/O/5M-38/13 stating *"4... this Department has already decided not to give further approval to any Sishu Shiksha Kendra/ Madrasah Shiksha Kendra / Madhyamik Shiksha Kendra/ Madhyamik Shiksha Kendra (Sr Madrasah Type) and the pending applications of such institutions may be considered for recognition as unaided Madrasahs if the applicants agree. 5. Under the circumstances, it is not possible to approve the conversion of the Madrasah to a Madhyamik Shiksha Kendra (Sr Madrasah Type)."* Thus, aggrieved by the order dated 11.12.2013 of respondent No. 1, the present writ applications are preferred.

6. It has been submitted by the learned counsel for the petitioners that the particulars of the Madrasah supplied by the petitioner were inspected by respondent authorities and upon enquiry reports of the District Level Inspection Team, the institutions appeared at Serial No.34 in the consideration zone of conversion as Madhyamik Siksha Kendra (Senior Madrasah Type) for the District of Murshidabad vide memo dated 25.03.2010. Since the names were published in the list, the Madrasahs had fulfilled the conditions necessary for conversion and were therefore entitled for approval in accordance with the memo issued by respondent No.1 on 15.12.2009. However, the respondent authorities acted illegally and irrationally by refusing to grant the Madrasahs the status of Madhyamik Shiksha Kendra (Senior Madrasah Type) without any valid reason.

7. It has been submitted by the learned counsel for respondent No.1 that during pendency of approval of applications of the petitioners, a memo bearing no 1802-MD/0/5M-34/13 dated 07.10.2013 was issued by respondent No.1 providing that *"It has been decided that no further approval to any Sishu Shikha Kendra/Madrasah Shiksha Kendra/ Madhyamik Shikha Kendra/ Madhyamik Shikha Kendra will be given. However, the pending applications of such institutions may be considered for recognition as un-aided Madrasahs, if the applicants agree."* In pursuance of solemn order dated 10.07.2013, the petitioners were given an opportunity of being heard on 11.11.2013. After proper verification and scrutiny, it was found that the Madrasahs were not eligible for conversion as Madhyamik Siksha Kendra (Senior Madrasah Type). By correct interpretation of the order dated 10.07.2013 as well as Memo dated 07.10.2013, the claim of the petitioners were barred by policy decision.

8. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the Madrasahs in question cannot be converted into a Madhyamik Siksha Kendra (Senior Madrasah Type) as per Memo no 1802-MD/0/5M-34/13 dated 07.10.2013.

9. It is a settled principle of law that in policy matters the Court should, ordinarily defer to the judgment of the policy makers unless the decision is clearly violative of some statute or is shockingly arbitrary. The Supreme Court in **Directorate of Film Festivals & Ors. Vs. Gaurav Ashwin Jain & Ors.** reported in **(2007) 4 SCC 737** held that-

"Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review".

10. The Memorandum in question unequivocally restricts all educational institutions having pending applications under which the writ petitioners' application fall from being identified as a Madhyamik Siksha Kendra. Such

representations can only be considered for recognition as an unaided Madrasah.

11. In such view, the writ application being WPA No. 8001 of 2014 and WPA No. 8004 of 2014 lacks merit and the same are dismissed accordingly.

12. There will be no order as to costs.

13. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

26.06.2024

PA (BS)