

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Present :
The Hon'ble Justice Aniruddha Roy**

WPA 14109 OF 2019

Sri Biswanath Ghosh

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Narayan Chandra Bhandari
Mr. Abhijit Sarkar
Mr. Raja Biswas.

For the Respondents : Mr. Gourav Das
Ms. Kalpita Paul.

Heard on : 19.04.2024

Judgment on : 19.04.2024

Aniruddha Roy, J. :

1. Affidavit-of-service, filed in Court today, is taken on record.
2. This is a hearing matter upon direction for filing affidavits. The report of the registry dated September 3, 2021 shows that, despite there

being a direction dated **March 19, 2021** no affidavit-in-opposition has been filed.

3. Considering the issue involved in this writ petition and considering the longstanding pendency thereof, this court is of the view that, no fruitful purpose shall be served by keeping the writ petition pending any further and, accordingly, this Court proceeds for its final disposal.

Facts :

4. Chequered history of writ litigations claiming recognition of an organising school.

5. The sole petitioner claims to be the Secretary of the Managing Committee of one **Gaccha Anushila Junior High School, District – Nadia** (for short the school) which was established on **January 2, 1986**. Through one after another writ petitions the petitioner and/or the school claimed recognition. The issue ultimately travelled before the Hon'ble Supreme Court. The Hon'ble Supreme Court by its order dated **April 28, 2017** had disposed of the **Special Leave Petition, Annexure-P8 at page 41** to the writ petition with the following observation :

“The singular grievance that has been urged in this special leave petition is that the Division Bench of the High Court should have been well advised to decide the justification for grant of recognition for establishment of a school to meet the parameters but it left it to the authorities to decide.

We have been apprised that the competent authority to decide is the West Bengal Board of Secondary Education. As the recognition has not been granted and the petitioners feel grieved, we permit the petitioners to file a fresh application within six weeks hence with all the requisite papers under the prevalent

law. If there will be any defect in the application, the Board shall intimate the applicant to remove the defects and thereafter the Board shall consider the application within eight weeks therefrom. Needless to say, the Board shall afford an opportunity of hearing to the competent authority of the schools while dealing with the application for grant of recognition.

As we are passing a fresh order, the Board shall not be influenced by any of the observations made by the learned Single Judge or the Division Bench. Be it clarified, we have not expressed any opinion on the merits of the case.

The special leave petitions are accordingly disposed of. There shall be no order as to costs."

6. Pursuant to and in terms of the direction of the Hon'ble Supreme Court the school through its Secretary submitted an application dated **June 2, 2017, Annexure-P9 at page 43** to the writ petition before the respondent no.3.

7. The respondent no.3 then by its impugned reasoned order dated **October 4, 2018** which was communicated to the petitioner by a written communication dated **October 11, 2018, Annexure-P14 at page 55** to the writ petition disposed of the said application seeking recognition as an aided institution with the following observation :

"Complying with the order dt.28.04.2017, passed by the Hon'ble Supreme Court the President, WBBSE fixed a date of hearing on 01.08.2017 at 11.30 A.M. upon issuance of this office Memo No.106/C (Law), dt. 20.07.2017. But as the petitioners did not turn up on the scheduled date, the hearing was adjourned. Only one person Miraj Ali Mondal, stated to be an A.T. of the school had appeared at the time of hearing. Thereafter, the WBBSE again refixed the date of hearing on 29.08.2017 at 11.30 A.M. After hearing, the concerned D.I. of Schools (S.E.) was requested to conduct a thorough enquiry and submit a report within 15 days to

enable this office to take a decision. Memo No.139/C (Law), dt. 04.09.2017 was issued accordingly to the D.I. of Schools (S.E.). As we have not received any such enquiry report from the D.I.'s end a reminder was also issued by this office vide Memo No.85/C (Law), dt. 16.08.2018. The instant W.P. has been filed praying for recognition of the school. On 20.08.2018, the Hon'ble Mr. Justice S. B. Saraf directed the Board to grant hearing to the Managing Committee of the school, the Headmaster and Mr. Biswanath Ghosh, the Secretary of the School within a period of 6 weeks from the date of communication of the order to ensure compliance of the Supreme Court's Order.

Complying with the above direction of the Hon'ble Court, hearing was again fixed by the Adhoc Committee of the Board on 04.10.2018 at 12 Noon upon issuance of hearing notice vide memo no.120/C Law, dt..25.09.2018.

On the scheduled date, the following persons attended the hearing: 1) Mr. Biswanath Ghosh, petitioner and secretary to the school, 2) Mr. Amit Ghosh, the Headmaster, 3) Mr. Hiranmoy Ray, the A.I. of Schools (S.E.), Nadia.

FINDINGS : The Adhoc Committee of the Board took note of the fact that an enquiry report dt.27.08.2018 (Memo No.201/Law/SE, dt.03.10.2018) of the D.I. of Schools (S.E.), Nadia was submitted at the time of hearing. The school authority did not submit any fresh application to the Board under the prevalent law in accordance with the verdict of the Supreme Court dt. 28.04.2017 as per Bye Laws 2007. Hence the Adhoc Committee is not in a position to arrive at any decision in this regard.

Being empowered by the Adhoc Committee of the Board vide its meeting dt.07.08.2018, agenda no.10, 1, President, Adhoc Committee of the Board direct the petitioner to submit application for recognition in prescribed format as per prevalent law. The matter may be considered after receiving all the documents from the school and also the opinion of the C.S.E., West Bengal."

8. The petitioner has assailed the said impugned order dated **October 4, 2018** communicated on **October 11, 2018** through the instant writ petition, *inter alia*, with the following prayer :

“Writ or writs, order or orders, direction or directions be passed commanding the respondent authority to give effect to the solemn order dated 28.04.2017 of the Hon’ble Supreme Court in Special leave to Appeal (C) No.(s) 27867-27868 of 2015 and be passed an order to set aside the impugned order dated 11.10.2018 vide Memo No.134/C/1 Law passed by President, Adhoc Committee of West Bengal Board of Secondary Education and further order be passed for recognition of aided school by the respondent authority and Rule may be made absolute why such order shall not be passed;”

Submissions :

9. Mr. Narayan Chandra Bhandari, learned counsel appearing for the petitioner referring to the said impugned order dated **October 4, 2018** submits that, the same was passed in non-compliance and derogation of the direction of the Hon’ble Supreme Court. He submits that, the relevant school was established in **1986** and the Hon’ble Supreme Court passed its **fresh order** on **April 28, 2018** directing the petitioner to file a **fresh application** with all the requisite papers and to decide the issue under the **prevalent law**. He submits that, the prevalent law should be construed and understood as the law prevailing at the point of time when the relevant school was established in **1986** and since then repeatedly

applications were made seeking recognition of the relevant school as an aided institution.

10. Learned counsel for the petitioner submits that, the law had subsequently changed with the promulgation of the **West Bengal School Service Commission Act, 1997** (for short **1997 Act**) as amended from time to time including the by-laws of the **West Bengal Board of Secondary Education (Recognition of Unaided Institution) Bye-laws, 2007** (for short the **2007 Bye-laws**) but since the direction of the Hon'ble Supreme Court was to consider the issue in terms of the prevalent law, the said **1997 Act** or the **2007 Bye-laws** shall not apply and it should have been considered in the light of the law prevailing in **1986**.

11. Hence, learned counsel for the petitioner submits that, the impugned order is not tenable in law and should be set aside and mandamus be issued directing the appropriate authority to grant recognition to the relevant school as an aided institution.

12. Mr. Gourav Das, learned State counsel referring to the said direction of the Supreme Court submits that, the direction was made by the Hon'ble Supreme Court as a **fresh order** directing the petitioner to file a **fresh application** which was directed to be considered under the **prevalent law**. He submits that, with the promulgation of the said **1997 Act** as amended from time to time and with the introduction of the said **2007 Bye-laws** the previous law prevailing on the issue for

recognition of an institution stood repealed and the said **1997 Act** as amended from time to time including the **2007 Bye-laws** are the governing law under which the petitioner has to apply and then his application shall be considered.

13. Mr. Gourav Das, learned State counsel referring to the said impugned decision dated **October 4, 2018** submits that, the petitioner was duly granted an opportunity to submit the application following the said **2007 Bye-laws** to enable the respondent no.3 to consider the application for recognition of the relevant school.

14. Mr. Das, learned State counsel further submits that, after the promulgation of **The West Bengal Schools (Control of Expenditure) Act, 2005** there is no provision for any aided school and no unaided school shall be entitled to receive any financial assistance from the State Government. Under the prevailing law there is no question of granting recognition of an aided institution.

15. *Per contra*, learned counsel for the petitioner referring to the proforma inspection report at **page 32** to the writ petition, submits that, the concerned Zilla Parishad on **July 24, 1997** recommended for recognition but still the relevant school has not received any recognition.

Decisions :

16. After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, from the observation

made by the Hon'ble Supreme Court, as quoted above, it appears to this Court that, the petitioner was permitted to file a ***fresh application*** within a stipulated timeframe with the requisite papers under the ***prevalent law***. The order of the Supreme Court was a ***fresh order***. The order was passed by the Hon'ble Supreme Court on ***April 28, 2017***. On a reading of the said order and the direction of the Hon'ble Supreme Court, this court is of the view that, when a ***fresh application*** was directed to be submitted with a direction to consider on the basis of the ***prevalent law*** in terms of the ***fresh order*** passed by the Hon'ble Apex Court, the ***Prevalent Law*** has to be considered and understood as the law prevailing as on the date of submission of such an application by the petitioner. The application was submitted by the petitioner on ***June 2, 2017***.

17. With the promulgation of the said ***1997 Act*** as amended from time to time and with the introduction of the said ***2007 Bye-laws*** and from the meaningful reading of the provisions thereunder, this Court is of the view that, all the previous governing provisions of law relating to recognition of an institution were given a go bye and stood repealed and any application submitted seeking recognition of an institution after the promulgation of the said ***1997 Act*** and the ***2007 Bye-laws***, such application has to be considered in the light of the said ***1997 Act*** as amended from time to time including the said ***2007 Bye-laws***. Any law

after being repealed automatically suffers its natural death, unless specifically saved by the repealing statute.

18. The direction of the Hon'ble Supreme Court dated **April 28, 2017** on its reading appears to this court that, **1986 law** shall not be construed and understood as the **Prevalent Law**.

19. In view of the foregoing discussions and reasons, this Court is of the considered view that, the findings of the reasoned order dated **October 4, 2018** passed by the respondent no.3 are just and proper and in sync with the direction of the Hon'ble Supreme Court. Accordingly, the finding therein is not interfered with.

20. However, following the direction of the Hon'ble Supreme Court, the petitioner shall be at liberty to apply according to the provisions under the **Prevalent Law** before the **respondent no.3** seeking recognition of the relevant school, strictly in accordance with law.

21. In the event such an application is submitted by the petitioner and/or the relevant school upon compliance of all the necessary formalities in law, then the **respondent no.3** shall consider the same after affording an opportunity of hearing to the petitioner and shall pass its reasoned order strictly in accordance with law on the issue following the said direction of the Hon'ble Supreme Court.

22. The entire exercise, as directed above, shall be carried out and completed by the respondent no.3 positively within a period of **six weeks**

from the date of receiving the application from the petitioner and/or the relevant school.

23. With the above observation and directions this writ petition **WPA 14109 of 2019** stands ***disposed of***, without any order as to costs.

24. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)