

MAT 1870 of 2023
with
I.A No. CAN 1 of 2023

Smt. Kuheli Das, Assistant Teacher & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Kanai Lal Samanta
... For the Appellant

Mr. Pinaki Dhole
Mr. Avishek Prosad
... For the State Respondents

1. We have heard the learned counsel appearing for the parties.

2. The appeal is arising out of an order dated 2nd May, 2023 in which the appellants/writ petitioners have prayed for cancellation of the order vide no. 580-SE(L)/SL/5S-68/05 dated 07.6.2018 passed by the Principal Secretary, School Education Department, Government of West Bengal, whereby 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.

3. Learned counsel appearing for the appellants have contended that the writ petition was dismissed on misconception of facts and misconstruction of Rule 6 of the West Bengal Schools (Control and Expenditure) Act, 2005. It is

submitted that no unaided school is entitled to get financial aid from the State Government was introduced only in the year 2005 whereas the said school was recognized in the year 1999 and the schools similarly situated have received financial aid from the State. It is further submitted that the appellants fulfilled all the parameters for grant-in-aid in favour of the aforementioned school and it is the duty and obligation of the State authorities to ensure that the school can receive such grant as it would benefit the students at large.

4. Mr. Pinaki Dhole, learned counsel appearing for the State, has submitted that the school was granted recognition without any financial assistance and it was quite known to the school that the school would not be receiving any financial assistance from the State. Mr. Dhole has referred to Rule 6 of the West Bengal Schools (Control and Expenditure) Act, 2005 and interpreted it to mean that “no unaided school shall be entitled to get any financial assistance from the State Government.”

5. It is clear that when the said school was given recognition it was made known to the school that it is an unaided school. In fact the issue came

up for consideration APO No. 293 of 2005 with WP No. 313(w) of 2005 in which the coordinate bench expressed the following view:-

“At the time of recognition of the State it was made clear that the School 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 apprised 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.”

6. It further appears that a subsequent coordinate bench in **FMA 1923 of 2018 (The State of West Bengal & Ors. Vs. The MNG. Comm., Dakshin Mahisda Adarsha Siksha Niketan & Ors.)** decided on 7th February, 2023 has made the following observation :-

“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)."

7. As rightly pointed out by the learned Single Judge that the issue raised in **MNG. Comm.**,

Dakshin Mahisda Adarsha Siksha Niketan & Ors.

wherein it has been specifically stated that the order granting recognition without financial aid was accepted by the petitioners and it was also observed that grant in aid cannot be claimed as a matter of right in contravention of Rule 6 of the said Act of 2005.

8. We have independently perused the order passed by the Principal Secretary on the basis of the representation made in which also we find that the Secretary has clearly taken into consideration the fact that the time of recognition it was made clear to the school that they would not receive any financial assistance. The Principal Secretary relied upon the DSE's report dated 11th November, 2002 in which the statement made on behalf of the Secretary of the school was taken note of. The School has clearly stated before the DSE that the appointment letters would be issued upon getting recognition, approval and payment of salary would be the obligation of the school. The Principal Secretary has also noticed certain discrepancies with regard to the information furnished by the school authorities with regard to the teaching and non-teaching staff and in this regard he had also taken note of the DLIT report dated 17th August,

1996 and the statement of the school dated 29th December, 2004 and 10th August, 2006.

9. Under such circumstances, we are of the view that the learned Single Judge was justified in dismissing the writ petition as the writ petitioners cannot claim the grant-in-aid of the Government as a matter of right for the aforementioned school.

10. In view of the above, the appeal being MAT 1870 of 2023 stands dismissed.

11. In view of dismissal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2023 and the same is accordingly dismissed.

12. However, there shall be no order as to costs.

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar,J.)

(Soumen Sen, J.)

