

WPA 29284 of 2015

Rezaul Karim
Vs.
State of West Bengal & Ors.

Mr. Ekramul Bari,
Mr. Siddhartha Sankar Mondal,
Sk. Imtiazuddin.

... for the petitioner

Mr. Pinaki Dhole,
Ms. Indrani Nandi.

... for the State

1. The writ petitioner who seeks approval with respect to the Madrasah established in 1999, is aggrieved with the letter dated July 2/17, 2015, written by the Director & Ex-Officio, Special Secretary to the Government of West Bengal regarding disqualification of the said Madrasah namely Khargram Senior Madrasah, to get an order of approval.
2. The letter dated July 2/17, 2015, speaks that approval cannot be given to the petitioner/Madrasah on the following grounds:-

“5. Even it may be mentioned here that the recommendation of the DLIT has not been reflected on the application. After scrutinized, it appears that some deficiencies have been found from the application [Sl. No.86 & 9 (Regd. Latrine & Urinal) – as prayed for co-education institution].

7. It is to state the Government in the Minority Affairs & Madrasah Education Department has decided that no further approval will be given to any SSK, MSK, Madhyamik Shiksha Kendra, MSK (Sr.

Type) vide this Department letter No. 1802-MD dt.07.10.2013 and addressed to the DME, WB.”

3. Mr. Bari, learned counsel is appearing on behalf of the petitioner.
4. He says that the decision by dint of the said impugned letter as above, not to grant approval to the petitioner/Madrasah is an unreasonable one and based on no justifiable ground.
5. He says that the same is not in conformity with the guidelines for approval of Madrasahs.
6. Mr. Bari, learned counsel takes this Court to the previous order of this Court in W.P. 33562 (W) of 2014 dated January 30, 2015, to show that the Court directed for consideration of the letter of the Director of Madrasah Education, West Bengal dated June 22, 2012, by the Director of Minority Affairs and Madrasah Education Department, Government of West Bengal.
7. The impugned order is a result of such consideration by the concerned authority.
8. Mr. Bari, learned counsel says further that the reasons shown to turn down petitioner's prayer for approval of Madrasha, are curable, in so far as the grounds of non-availability of the latrine etc., can be addressed by constructing that and the condition can be fulfilled by the said way.
9. Mr. Bari, learned counsel has further stated that the reasons for the decision being taken by the Government of West Bengal not to grant approval to the Madrasah due to financial stringency and only to grant the same in case of a Madrasah willing to be

recognized as an unaided institution, is only unreasonable and arbitrary and not in conformity with the settled law.

- 10.** On the grounds as above, Mr. Bari, learned counsel seeks that the writ petition be allowed directing granting approval to the petitioner/Madrasah.
- 11.** Mr. Dhole, learned counsel is representing the respondent authorities including the State.
- 12.** Mr. Dhole, learned counsel strongly relies on the guidelines namely Guidelines For Madhyamik Shiksha Karmasuchi (Senior Madrasah Type) Under The Minority Affairs & Madrasah Education Department, Govt. of West Bengal regarding grant of approval to such an institution. He has further relied on the letter dated October 7, 2013 issued by the Secretary to the Government of West Bengal, Minority Affairs and Madrasah Education Department and submits that by dint of the same the authorities have informed about the policy decision not to grant any further approval to an institution like that of the writ petitioner. He has further referred to the stipulation made in the said letter that only in case the petitioner would be interested to get the Madrasah approved as an unaided institution, the authorities would not have any objection for its approval. Otherwise, he says, that by dint of the said letter and since thereafter, the respondent authorities have restricted grant of approval to a Madrasah, except in accordance with the stipulations made in the letter dated October 7, 2013.

13. Mr. Dhole, learned counsel further submits that according to the guidelines, pendency of an application would not entitle the petitioner to any right for approval or inspection of the same. On this, he has relied on guideline no. 10. He has further stated that budgetary constraint may rightfully render the authorities to take decision to stop approving institutions and in this case the authorities have done only in terms of the said provision of the guidelines. Mr. Dhole, learned counsel has relied on guideline no. 15 in this regard.
14. Mr. Dhole, learned counsel says that on the basis of the above, there would not be any reason to find that the authority's decision in the impugned letter is either unreasonable or illegal in any manner whatsoever. On the contrary, he says, that the writ petition is unfounded.
15. Mr. Bari, learned counsel, in reply, has stated that since the inspection of the Madrasah have already been concluded and the report is submitted as regards some curable defects with respect to the infrastructure, guideline no. 10 would not be applicable in case of the petitioner/Madrasah. Mr. Bari, learned counsel would not deny issuance of the letter dated October 7, 2013 by the Secretary to the Government of West Bengal but would suggest that the same may only have the retrospective effect, to even take the petitioner's case, in its purview.
16. The petitioner's right to be granted with an approval order, as regards the Madrasah, is dependent on fulfilment of the criterion as prescribed under the

guidelines and/or as per the procedure or practice. So far as the same is concerned, the petitioner is yet to fulfil the requisite formalities, particularly as to the infrastructure. This position is not denied in this case. The result of inspection and decision of the authority thereon, is available in the form of letter dated July 2/17, 2015, which is impugned in this case. However, even before this, vide dated October 7, 2013, a decision has been taken, not to grant any further approval to Madrasahs, unless unaided.

17. Apropos the guideline No. 10 as stated above, the above decision cannot be said either to be arbitrary or unreasonable.

18. Guideline No. 10 of the Guidelines For Madhyamik Shiksha Karmasuchi (Senior Madrasah Type) Under The Minority Affairs & Madrasah Education Department, Govt. of West Bengal, lays down, as follows:-

“10. Submission of application: Willing existing unrecognized organized Sr. Madrasahs may apply in response to the advertisement to the Director of Madrasah Education in the prescribed format. Mere application shall not entitle a proposed applicant Madrasah to have inspection or approval.”

19. Therefore, making an application for approval, would not bestow any right upon the petitioner, to be granted the prayer therein, particularly when there are deficiencies *vis-à-vis* the settled norms, as regards the infrastructure facilities.

20. Therefore, the Court finds in this case very little or no reason to see any breach of petitioner’s right, for

due fulfilment of which, the respondent authority may be held accountable.

- 21.** Further, the authorities reserved the right to take decision as per the guideline in view of the budgetary provision sanctioned stringency etc. For this, the guideline no. 15 may be relied which is as follows:-

“15. Approval: The Director of Madrasah Education, W.B., shall peruse and scrutinize the reports submitted by the DLIT. If DME is convinced about the need and viability and fulfilment of conditions for approval as Madhyamik Shiksha Kendra (Sr. Madrasah Type), he may accord approval to the proposed MSK within the sanctioned strength and budgetary provision and within the quota, if so fixed, for each district in order of priority. Mere fulfilment of conditions may not entitle a proposed MSK for approval and government assistance. At the time of according approval, preference will be given to the organised Sr. Madrasah established within 31.12.2000.”

- 22.** Accordingly, the Court finds that the decision taken by the respondent authority vide letter dated October 7, 2013 is within the purview of the guideline as prescribed for the purpose of approval of Madrasah. No illegality or unreasonableness can be successfully alleged against the so called impugned action of the respondent authority in issuing the impugned letter dated July 2/17, 2015.

- 23.** Having found no illegality in the decision made by the authority by dint of the said impugned letter, this Court is of the opinion that the writ petition may not merit any success.

24. This writ petition being WPA 29284 of 2015 is dismissed.

25. Urgent Photostat certified copy of this order duly downloaded from the official website of this Court upon compliance all legal formalities.

(Rai Chattopadhyay, J.)