

**(2004) 10 CAL CK 0013**

**Calcutta High Court**

**Case No:** M.A.T. No"s. 2536 and 2951 of 2003

West Bengal Madrasah  
Education Board and Another

APPELLANT

Vs

Shaikh Sahajamal and Others  
<BR> Secretary W.B.B.S.E. and  
Others Vs Sadhana Banerjee and  
Others

RESPONDENT

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**Date of Decision:** Oct. 15, 2004

**Acts Referred:**

- Constitution of India, 1950 - Article 26, 30, 37, 41, 45

**Citation:** (2005) 2 CHN 67

**Hon'ble Judges:** Barin Ghosh, J; Alok Kumar Basu, J

**Bench:** Division Bench

**Advocate:** Rabibal Moitra, Sumit Panja and Gautam Roy, for the Appellant; D.P. Mukherjee, Debjit Mukherjee for respondent Nos. 2 to 10 and B.K. Bhattacharjee, for respondent Nos. 11, 12 and 13, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

1. The writ petitioners/ respondents approached this Court by filing W.P. No. 12436(W) of 1999 and W.P. No. 17325(W) of 2001 challenging the grounds for not recognizing the Madrasah established by the writ petitioners/ respondents. The learned Judge dealt with the grounds upon which refusal to recognize was based, and while doing so took note of the fact that while one or two of the facilities available at the Madrasah established by the writ petitioners/ respondents are better than similar facilities available with other similarly placed institutions, which have got recognition, the Government and the Board have decided not to recognize the Madrasah established by the writ petitioners/ respondents for such shortcomings in relation to those facilities. It was pointed out that one of the facilities available with the Madrasah established by the writ petitioners/

respondents, is classrooms measuring about 280 sq. ft. each, which was termed as inadequate, but, schools having classrooms measuring about 160 sq. ft. only, have been recognised. By the order impugned the appellant Board has been directed to recognize the Madrasah/ School, established by the writ petitioners/ respondents with direction upon the District Inspector of Schools for taking steps to give approval of appointment to the staff of the said Madrasah.

2. In terms of Article 41 of the Constitution it is the obligation of the State to make effective provision for securing the right to, amongst others, education within the limits of its economic capacity. In terms of Article 45 of the Constitution it is the obligation of the State to provide free and compulsory education for all children until they complete the age of 14 years. Articles 41 and 45 are contained in Part IV of the Constitution. In terms of the provisions contained in Article 37 of the Constitution, the provisions contained in Articles 41 and 45 of the Constitution are not enforceable by Courts, nevertheless in terms of Article 37 of the Constitution the principles laid down in Articles 41 and 45 of the Constitution are fundamental in the governance of the country and it is the duty of the State to apply those principles in making laws.

3. In order to apply the principles contained in Articles 41 and 45 of the Constitution, the State Government has made appropriate laws. One of them is the West Bengal Primary Education Act, 1973. The other three of such Laws, with which we are concerned here, are the West Bengal Board of Secondary Education Act, 1963, the West Bengal Council of Higher Secondary Education Act, 1975 and the West Bengal Board of Madrasah Education Act, 1994.

4. In this State a student studies in Class-I when he is six years old. After pursuing studies upon Class-X, a student becomes entitled to appear in the Secondary Examination. When a student is successful in the Secondary Examination, he is entitled to be admitted in Class-XI. After studying Classes XI and XII, a student becomes entitled to sit in the Higher Secondary Examination.

5. Education imparted in Classes I to IV are called primary education; whereas education imparted in Classes V to X are called secondary education and education imparted in Classes XI and XII are called higher secondary education.

6. Primary education at present is imparted through Primary Schools, all of which are controlled and managed by the District Primary School Councils, established by and under the West Bengal Primary Education Act, 1973. At present it is those Councils who establish Primary Schools and manage all Primary Schools, which have been established. The salaries payable to the teachers of such schools are provided and paid by the Council, which in turn gets appropriate aid from the State Government. The syllabus to be taught at the primary level is determined by the West Bengal Board of Primary Education, constituted by and under the said Act.

7. The Boards established by and under the West Bengal Board of Secondary Education Act and the West Bengal Board of Madrasah Education Act decide the syllabus to be taught at the secondary level and also conduct the Secondary Examinations. The Council, established by the West Bengal Council of Higher Secondary Education Act, decides the syllabus to be taught at the Higher Secondary level and conducts Higher Secondary Examinations. These Boards and Council, however, do not establish, nor manage schools imparting secondary education or higher secondary education. They, however, have been permitted to recognize institutions competent to impart secondary or higher secondary education, as the case may be, subject to any direction of the State Government in regard to the number, location and manner of selection. As a result there are Government Schools as well as Non-Government Schools imparting secondary as well as higher secondary education. There are basically two classes of Non-Government institutions imparting secondary and higher secondary education, one of them are aided institutions and the other of them are unaided institutions. In this judgment we are not dealing with those institutions which have been established by religious denominations or minority institutions, which are entitled to fundamental rights granted by Articles 26 and 30 of the Constitution. There are two types of aided institutions. First of them are those where the entire burden of salaries payable to the teaching and non-teaching staff are borne by the Government and the other of them are those institutions where the institutions pay the salaries to the teaching and non-teaching staff from their own resources, but the Government provides dearness allowances payable to such employees. The second type of aided institutions are gradually becoming fewer in number.

8. The Government is providing aid to recognised institutions for it has not been possible for the Government to establish schools for imparting secondary and higher secondary education to all the students of this State seeking such education.

9. Keeping in mind that it may not be possible for the Government to establish all institutions required for imparting secondary and higher secondary education to accommodate all present and future students and being alive of the fact that in order to discharge pious obligation of imparting education many right thinking persons having regard to their local needs have and are establishing institutions, the Government has, from time to time, prescribed the minimum facilities which an institution must have to impart secondary and higher secondary education. These prescriptions have been made by different Government Orders and Notifications. None of them are subject-matter of challenge before us. Those have been accepted as the basic standard for imparting meaningful education. Having regard to the fact that the student-teacher ratio in this State, as prescribed by the Government, is 40:1, the Government has prescribed that a classroom should not be less than 400 sq. ft. This has been done keeping in view of the hygiene of the students, who would be imparted education. Similarly, the Government has prescribed what should be the qualification of the teachers. It has prescribed what kind of structure the school

must have. It has also prescribed what should be the minimum area of land required for a school. These prescriptions are the minimum basic requirements. Those have been fixed by the Government having regard to its experience. A school seeking recognition must be able to achieve those minimum requirements. If it does not, then the students studying in the said institution will not get the minimum of which he is expected to get and which others are getting. It must be kept in mind that these prescriptions have been made keeping in view the need of the students to be educated.

10. We personally feel that if a school has not achieved those minimum prescribed standards, it cannot get recognition, even if it is seeking recognition without any aid. It is unfortunate that the Government and the Boards, established by the aforementioned Acts, have granted recognition to institutions, which have not achieved the minimum prescribed standards, but on that ground another school cannot be recognised if it has not achieved those minimum standards.

11. During the course of hearing we felt disturbed that the Government and the Boards established by the said Acts have granted recognition to institutions, which have not achieved the minimum standard prescribed by the Government and for not achieving such minimum standards, they are not recognizing other institutions. We, therefore, wanted to fix responsibility and requested the learned Government Pleader to tell us the designation of the person who should be responsible to ensure that the schools getting recognition have achieved at least the minimum prescribed standards. The learned Government Pleader has handed over to us a copy of the communication received by him from the Hon"ble Minister-in-Charge of Education, which is as follows :

"A system which was introduced in recognizing new Junior High School or upgrading Junior High School to High School in 1978.

When there is a proposal from the Zilla Parishad to recognize any Junior High School or upgrading any Junior High School to High or Higher Secondary School, School Education Directorate make an order to Distt. Level Inspection Team where the representatives of West Bengal Board of Secondary Education and that of West Bengal Council of Higher Secondary Education and Madrasah Board are included. District Inspector of Schools (Secondary) work as ex officio Secretary of that District Level Inspection Team. The District Level Inspection Team used to inspect the school concerned and collect required information including academic need of the area, floor space condition of the school building, sanitary arrangements, management of the school, financial position etc. On the basis of the report of the District Level Inspection Team and on their remark, School Education Directorate make recommendation to School Education Department and School Education Department afterwards, within the fixed quota calculated on the basis of the concurrence of the Finance Department for recognizing/ upgrading number of schools in a particular financial year, recommend to the West Bengal Board of

Secondary Education for recognition or upgradation of the school concerned. So the report of the District Level Inspection Team and their remarks is judiciously considered by the Director of School Education. No discrepancies is committed by the Director of School Education.

I can assure that the consideration of the Director of School Education in recognizing any Junior High School or upgrading any Junior High School to High School will be done in strict conformity with the rules and regulations of the Government and no discrimination will be committed to any school.

But it has been decided by the Government on account of financial constraint that no new Junior School will be recognised with financial aid from the Government and this decision has been taken 3 years back. Of course, if there is any necessity of setting up of any Junior High School, then Rural Development and Panchayat Department used to set up Sishu Siksha Kendra where the teachers will be paid @ Rs. 2000/- per month. In case, any organisation set up any Junior High School and does not seek any financial help from the Government and if there is congenial atmosphere and urgent academic need in that area, the Government used to recommend prayer of these schools to West Bengal Board of Secondary Education for recognition without any financial liability.

I can assure that discrimination will not be committed upon the different schools while considering recognition or upgradation of any school, and Director of School Education will be solely responsible for this exercise."

12. This communication really does not answer our query in full. We feel that the Boards and the Council, established by the abovementioned Acts, and the Director of School Education, Government of West Bengal, should be jointly made responsible for not recognizing an institution unless the institution satisfies the minimum specified standard for establishment of an institution capable of imparting secondary and higher secondary education.

13. As aforesaid, the Government has specified, from time to time, the standard of required facilities. We think that those should be consolidated in one notification or Government order for the public knowledge, so that anyone inspiring to establish an institution to be recognised by the Boards, established by the abovementioned Acts, do establish the same having at least those minimum facilities. We direct the Government to publish such a Government Order/Notification as quickly as possible but not later than two months from now.

14. Before an institution is recognised the District Level Inspection Team inspects the facilities available at the end of the institution and gives its recommendations. There is a prescribed format, which is used by the District Level Inspection Team. The format is filled in by the institution. The informations supplied in the format are checked by the District Level Inspection Team and then they give their recommendations. In the said format an additional page or pages should be added

giving one by one the minimum prescribed requirements and the management of the institution shall be called upon, by filling up the appropriate space in such page or pages, to supply informations relating to compliance of such minimum requirements. The members of the District Level Inspection Team shall be required to fill up the appropriate space in such page or pages signifying their satisfaction of achievement of the minimum requirements by the institution. We think this would ensure that an institution seeking recognition has achieved the minimum requirements.

15. We would now address ourselves to the question of aid to be granted by the Government to recognize institutions. As aforesaid, Article 45 of the Constitution talks about free and compulsory education for all children until they complete the age of 14 years. Since a student will start education at the age of six in Class I, at the age of 14 years he will be in Class VIII. In this State there are two types of Junior High Schools. One of them are those which impart education in Classes V and VI, and are called two class Junior High Schools. The remaining are four class Junior High Schools imparting education in Classes V, VI, VII and VIII. Therefore, a child who is entitled to free and compulsory education until he completes the age of 14 years would in Class VIII when he is 14 years old. If aid is not granted to a Junior High School, the student studying there, despite being entitled to free education, will not be receiving the same. It is true that by reason of the provisions contained in Article 37 of the Constitution, the Court cannot direct the Government to provide free education to any child until he has completed the age of 14, but at the same time by reason of Article 37 of the Constitution itself the principles laid down in Article 45 of the Constitution in relation to free education for all children until they complete the age of 14 years is fundamental in the governance of the country and it is the duty of the State to apply the said principles while making laws. In such view of the matter, it appears to us that the decision of the Government as communicated by the Hon'ble Minister, as set out above, that no Junior High School will be recognised with financial aid from the Government is contrary to the directions of the Constitution and, accordingly, if necessary, the Government as well as the Boards, established by the said Acts, will be required to recognize Junior High Schools with financial aid from the Government.

16. The grant of aid including its nature and content will depend upon the recourses of the Government. However, for the purpose of doing the self-same thing for the self-same type of people it may not be possible for the Government to bring about discrimination. We make it clear that while granting aid for teaching a Class V student, the Government cannot say that the salary of the teacher will be less than the salary of another teacher doing the self-same thing in yet another school and, accordingly, vary the quantum of the aid. It is possible that two institutions established at two different places, who have matched the minimum requirements prescribed by the Government, are seeking aid and recognition, but the funds available with the Government do not permit it to provide aid to both the schools,

although such funds are adequate to provide aid to one of those schools, the Government may for public interest grant aid along with recognition to one such school, which is more deserving, but for that purpose would be required to spell out such public interest. It is also possible that 20 institutions seeking recognition and aid have achieved the minimum requirements, but the Government funds permit aid to only five of them, in such case, complying the principles laid down above and after recording reasons, the Government should give recommendation in respect of those five schools but keep the balance 15 pending till such time its funds permit giving of aid to them and in the normal course, unless the public interest so demands, should dispose of them one after the other chronologically on the basis of the date of their inspection by the District Level Inspection Team as and when fund would permit the Government to provide aid to them.

17. For the reasons as above, but with the above directions, we allowed these appeals and set aside the judgments and orders impugned, and while doing so grant liberty to the writ petitioners/respondents to apply afresh after the appellants have achieved the minimum requirements prescribed by the Government.

18. There shall be no order as to costs.

19. Let xerox certified copy of this judgment, if applied for, be handed over to the learned Advocates for the parties on the usual undertaking.