

State of W.B. And Others

Vs

Nuruddin Mallick and Others

Civil Appeals Nos. 4895-96 of 1998

(K. Venkataswami, Misra JJ)

18.09.1998

JUDGMENT

MISRA, J. –

1. Leave granted.

2. These appeals are directed against the judgment and order dated 9-2-1994 and 29-8-1995 by which the High Court directed the appellant-authorities to grant approval to the teaching and non-teaching staff including the Headmaster (Mohd. Nuruddin Mallick) in the respective posts held by them in a Madrasah known as Bishalaxmipur Pune Shah Mastania Junior High Madrasah.

3. The present case is one of such unfortunate tug-of-war between the management of an educational institution and the statutory authorities. Such situations are gradually rolling into a spate of litigations crumbling the very base of the educational environment. It is either on account of factionalism within the management, each faction when in power trying to put in his men contrary to the norms fixed or sometimes on account of authorities deliberately pulling the strings of the management for trifling reasons delaying the legitimate conferment of rights of the teachers, staff or the institution. Education is the foundation of the prosperity of any country, it shapes its future by inculcating discipline, culture and spirit into the youth. If the very foundation of education is involved in long-drawn-out litigation, the very hope and aspiration of the youth for the future is lost. Every contribution by any person entrusted with such noble service be it a teacher, management or staff, whether government functionaries or statutory authorities has to render service with dedication and with the sole objective to render service to the nation and in doing so eliminate, if any, trifling conflicts to reach the objective in accordance with law. Any action by all such has to be shunned and an atmosphere to be created which is conducive to the healthy atmosphere for the students. With this now we proceed to examine this case.

4. For establishing either Junior or High Madrasah which consists of four levels of classes, namely, Classes V to VIII as well as High Madrasah which have two levels, namely, Classes IX and X, the sanction of the State Government/West Bengal Madrasah Board is necessary. The appellants are the State of West Bengal, the President and the Secretary of the West Bengal Madrasah Education Board, renamed as the West Bengal Board of Madrasah Education. The case set up by the appellants is that the staff pattern as well as the required qualifications of teaching and non-teaching staff of madrasahs are prescribed from time to time. The circulars also lay down conditions under which a madrasah may be permitted to open additional class units or sections. The staff pattern for additional class units when approved are also prescribed. Where a Junior High Madrasah is upgraded as a High Madrasah, no fresh approval is required for teachers whose appointments have already been

approved by the Board as teachers of the Junior High Madrasah. The Bishalaxmipur Pune Shah Mastania Junior High Madrasah (for short "the said Madrasah") was recognised by the Board with effect from 1-1-1971 as a Junior High Madrasah (Classes V to VIII). The staff pattern originally approved was six teaching (including Headmaster) and two non-teaching staff. Opening of additional class units was approved from time to time and by 1981, posts of three additional teachers and one additional non-teaching staff had been sanctioned. As a result, the Junior High Madrasah had the approval for a total of nine teaching (including Headmaster) and three non-teaching staff. The said Madrasah opened Classes IX and X without any approval/sanction for the same. It appears that the Board from time to time granted ad hoc special permissions for the Class X students to appear at the school final examinations. In 1981, the writ petitions being CR No. 2391 (W) of 1981 and CR No. 14594 (W) of 1981 were filed by Mohd. Nuruddin Mallick for an order directing the authorities to recognise the said Madrasah as a High Madrasah (i.e. Classes V to X). In these writ petitions orders were made from time to time granting permissions for the students of Class X to appear in the school final examinations. The said CR No. 2391 (W) of 1981 was finally disposed of by the Division Bench of the High Court by an order dated 19-11-1986. The Division Bench directed the respondents in the writ petition, viz., the appellants herein to consider the case of the Madrasah for upgradation to a High Madrasah. There were contempt proceedings following the order dated 19-11-1986 (some of which came up to this Court). Finally an order dated 11-10-1991 was passed by the Division Bench of the High Court, which directed the authorities to grant recognition to the said Madrasah as a High Madrasah. The said order dated 11-10-1991 was modified on 7-7-1992 so as to direct that the recognition should be with effect from 1980. These orders have since been complied with and the Madrasah has been recognised as a High Madrasah with effect from 1980. The issue involved in the present appeal arises out of the facts subsequent to the recognition of the said Madrasah as a High Madrasah.

5. In terms of the prescribed rules, a High Madrasah consisting of six class units (i.e. Classes V to X with one class at each level) is entitled to appoint twelve teaching (including Headmaster) and three non-teaching staff. Considering the fact that three additional teachers and one additional non-teaching staff had already been approved for the Junior High Madrasah, i.e., Classes V to VIII, the total staff pattern for the upgraded High Madrasah became fifteen teaching and four non-teaching staff. Since nine teaching staff and three non-teaching staff had already been approved for Classes V to VIII, what was required to be permitted was approval to an additional six teaching and one additional non-teaching staff.

6. On 6-8-1992, the management of the said Madrasah forwarded to the appellant-authorities a list of 31 staff members consisting of 24 teaching and 7 non-teaching staff for approval. Relevant information with regard to this request for approval was required both by the District Inspector of Schools (DIOS) as well as by the Board. Without waiting for the disposal of the application for approval, a writ petition was moved by Shri Nuruddin Mallick on 11-11-1992, being CO No. 12099 of 1992, praying for orders directing the authorities to approve the said list of 31 staff.

7. During the pendency of the said writ petition, an order was made directing the District Inspector of Schools to submit a report. On 25-11-1992, such report was submitted by the Assistant Inspector of Schools under directions of the District Inspector of Schools, which disclosed that many of the teaching staff did not have the requisite qualifications. Since this was not a report by the District Inspector of Schools as ordered earlier by the Court, fresh orders were passed on 18-12-1992 and 23-12-1992 for the District Inspector of Schools himself to submit the report. On 6-1-1993, a fresh report was submitted by the District Inspector of Schools from which also it appears that the Madrasah was not entitled to approval for 31 teaching and non-teaching staff as applied for.

8. On 12-1-1994, the learned Single Judge after hearing the writ application directed the authorities to grant approval of 31 teaching and non-teaching staff. It was also directed that the Headmaster (Shri Nuruddin Mallick) would be entitled to get his salary in the pay scale of Headmaster with effect from 1-1-1980.

9. Three appeals were preferred against the said judgment dated 12-1-1994 of the learned Single Judge :

(i) FMAT No. 337 of 1994 by Shri Nuruddin Mallick & Ors.;

(ii) Appeal No. 386 of 1994 by added respondents being teachers who claimed to have worked but whose names had not been included in the list of 31; and

(iii) FMAT No. 799 of 1994 on behalf of the State.

10. In the present appeals, we are not concerned with the aforesaid Appeal No. 386 of 1994. An application for stay filed on 3-2-1994 in FMAT No. 337 of 1994 (being the appeal filed by Shri Nuruddin Mallick) came up for hearing on 9-2-1994 and the Division Bench of the High Court proceeded to pass an order directing the Board to approve the services of the teachers and non-teaching staff, as directed by the learned Single Judge, within a period of one month and further directed release of all salaries within a period of two months from the date of submissions of the grants-in-aid form to the authority concerned. The order dated 9-2-1994 then went on to provide as follows :

"After passing of this order, nothing remains to be decided in the appeal. Accordingly, the appeal is treated as on the day's list and both the appeal and the application are disposed of as above."

11. The further case is that the appellants in FMAT No. 337 of 1994 were not aggrieved parties but at their instance, the Division Bench was pleased to affirm the order of the learned Single Judge. Moreover, the contentions of the State authorities against the order of the learned Single Judge dated 12-1-1994 were not considered and their appeal remained pending without any decision. Strangely the hearing of the stay application was in fact treated as the hearing of the main appeal at the instance of a party who was not aggrieved by the order of the learned Single Judge.

12. The above order was followed by a contempt application being CR No. 398 of 1994 for non-compliance thereof. The contempt application was disposed of by an order dated 1-7-1994 wherein it was directed that the approval should be issued provisionally without prejudice to the rights and contentions of the parties and subject to further orders of the Court. The State authorities were given liberty to file a proper application within two weeks.

13. The State authorities thereupon issued orders for provisional approval and filed an application for recalling the order dated 9-2-1994. The said application, amongst others, was disposed of by the impugned judgment dated 29-8-1995.

14. So far as the approval of 31 teachers and non-teaching staff, as desired by the respondent-Madrasah through its letter dated 6-8-1992 is concerned, it can only be considered by the competent authority in accordance with the prescribed rules and on fulfilment of the criteria as laid down under the rules or circulars concerned. The submission on the face of it is that the prayer for approval was for a number far in excess of the permitted staff pattern. Further, the submission is that the report of

the Assistant Inspector of Schools dated 25-11-1992 on which reliance was placed by the learned trial Judge, reveals that the teachers do not possess the requisite qualifications. Similar is the position of the subsequent report of the District Inspector of Schools. The grievance of the appellants is that these reports were not even referred to or considered in the impugned judgment. Further, the Court has also not examined whether the request for approval complies with the prescribed rules and the permissible staff pattern or not, including the qualifications of the teachers. According to the submissions of learned Senior Counsel for the appellant, Mr. Dipankar P. Gupta, the High Madrasah is presently entitled to approval of six additional teachers and one non-teaching staff. The already approved nine teachers and three non-teaching staff who are included in the list of 31 do not require any further approval. The rest of the list containing twelve numbers cannot be approved unless it is shown that they possess requisite qualification and satisfy the justification of such number of posts as per staff pattern. It is submitted that the appellants are ready and willing to give approval to further six teaching and one non-teaching staff as per rules subject to their fulfilment of educational qualifications and other criteria as laid down in the rules.

15. On the other hand, the case of the respondents is that the Bishalaxmipur Pune Shah Mastania Junior High Madrasah was recognised by the West Bengal Madrasah Education Board (hereinafter referred to as "the Board") w.e.f. 1-1-1971 with Classes V to VIII. As its enrolment increased in all classes, three additional posts of teachers were sanctioned to it, raising the total sanctioned strength of teaching staff to nine including Headmaster and three non-teaching staff, including one clerk.

16. As there was no High Madrasah within a radius of 30 miles, i.e., 48 kms from that place, the then management applied for its upgradation to a X-Class High Madrasah with effect from 1-1-1976 leading to inspection of the said Madrasah by the authorities concerned on 17-9-1976 and 11-7-1980 who in turn, recommended for its recognition as a High Madrasah. But no order granting it such recognition was issued by the authority.

17. As the said Madrasah was maintaining Class X since 1976, it was all along granted special permission by the Madrasah Education Board from 1976 to 1980 for sending its students as regular candidates for High Madrasah final examination.

18. On refusal by the Madrasah Education Board to send its candidates as before for appearing at the said examination in 1981, the said Madrasah was constrained to move the High Court and obtained permission for the same for the period from 1982 to 1986. Thereafter, again on refusal of the High Court, the management of the said Madrasah moved this Court whereupon this Court granted permission for the said examination held in 1987 and 1989.

19. Thereafter, the said Madrasah has been regularly sending up its candidates since 1990 onwards. However, as the authority did not consider the case of upgradation of the said Madrasah, the management moved the High Court of Calcutta whereupon it, inter alia, directed for keeping one quota vacant as was allotted to the said Board by the State Government for the year 1980-81 till the question of recognition as a High Madrasah is considered by the authority. Thereafter, a series of cases including contempt proceedings went on before the learned Single Judge and the Division Bench of the High Court. Then the Division Bench on 19-11-1986 directed the appellants to consider the case of recognition of High Madrasah within three months in the light of the recommendations in the years 1980, 1984 and 1986. Since the appellants did not pass any order of recognition, the appellants moved initially the contempt proceedings, which was rejected by the High Court, and ultimately this Court passed the following order :

"Special leave is granted. We have heard the appeal. This appeal is filed against the order of the High Court dated 7-12-1988 by which it refused to take any action against the respondent for not complying with the writ issued by the High Court in appeal from Original Order No. 839 of 1986. The complaint of Mr. A. K. Sen, learned counsel for the appellants, is that the order dated 19-11-1986 passed by the High Court which had become final had not been complied with by the respondents. The High Court has disposed of the matter by observing :

'Contempt matter is between the Court and the alleged contemner-respondents... For the aforesaid reasons, we are not inclined to exercise our discretion in initiating a proceeding and accordingly we reject this application.'"

20. The High Court, on remand, directed the appellants to grant recognition within a period of two months, failing which the contemnors should appear on 20-12-1991 for passing necessary orders for imprisonment and fine. Thereafter, the appellants granted provisional recognition to the respondents for two years by order 10-12-1991.

21. Further, so far as the facts as aforesaid, submitted by learned counsel for the respondents were only to show the mala fide of the appellants in not giving recognition as a High Madrasah to the respondent-institution for which the respondents have initiated various proceedings and ultimately obtained the said orders. This was emphasised more to show the mala fide attitude of the appellant-authorities which it seems, was the foundation of the argument before the High Court resulting into the impugned orders. The controversy now in this case with which we are concerned, is regarding the approval of teaching and non-teaching staff of the said Madrasah. As aforesaid, submission for the appellants is that except a few teachers the other teachers do not prima facie possess the requisite qualification as per rules which requires scrutiny and adjudication by the authority concerned. In terms of the conditions laid down in the provisional recognition, the school authorities had to reconstitute the Managing Committee according to the rules. The trial Judge directed the Secretary of the Madrasah Board to accord approval of the election of members of the category of guardians and also directed the District Inspector of Schools to forward a copy of the report to the said Board for giving its approval in favour of the said 31 persons (24 teachers and 7 non-teaching staff) preferably within one month from forwarding of the report. Being aggrieved by the said order, an appeal was preferred before the Division Bench of the Calcutta High Court in FMAT No. 337 of 1994.

22. The Division Bench, as aforesaid, passed an order on 9-2-1994 directing the Board to give approval to the service of teaching and non-teaching staff of the said Madrasah within one month from the date in respect of whom recommendation had already been made and also directed to submit the grants-in-aid application for release of all salaries within two months. It is this order dated 9-2-1994, as aforesaid, which is the subject-matter of challenge in the appeal arising out of SLP No. 28178 of 1995.

23. Since in terms of the order dated 9-2-1994, the authorities concerned did not issue any order of approval of the teaching and non-teaching staff of the said Madrasah, a contempt proceeding was drawn against the appellants. On 1-7-1994, the Division Bench in the said proceeding directed to accord provisional approval to the teachers concerned by Tuesday next, subject to further orders without prejudice to the rights and contentions of the parties. Thereafter, provisional approval was given to 16 teaching and 3 non-teaching staff. Subsequently, the appellants made an application dated 19-7-1994 for the modification and for review of the order dated 9-2-1994.

24. It is not in dispute that the Division Bench of the Calcutta High Court, while deciding application in FMAT No. 337 of 1994, also decided the appeal, that is to say, FMAT No. 337 of 1994 which is evidenced from the following order :

"After passing of this order, nothing remains to be decided in the appeal. Accordingly, the appeal is treated as on the day's list and both the appeal and the application are disposed of as above."

25. The submission by learned Senior Counsel for the respondents, Ms Indira Jaising, is that the appellant-authorities are deliberately delaying to give recognition to the teaching and non-teaching staff though they have all the required materials with them. Further, the information sought by the appellants through the letter of the District Inspector of Schools dated 21-9-1992 and of the Secretary of the Board of the same date, is such, which is available with the respondents and the other from the respondents' earlier letter dated 6-8-1992 where qualification of all the teachers is mentioned and from other inspection reports of the appellants. It was faintly submitted that the delay is deliberately caused, as was caused in the case of recognition of the said institution as a High Madrasah with mala fide. Hence, it was submitted that the High Court had rightly directed the respondents to grant recognition to the teaching and non-teaching staff.

26. Learned counsel further submitted that the only question to be adjudicated is whether the number of teaching staff and their qualifications are, as required by the staff pattern for the High Madrasah, with reference to the relevant rules and circulars. It is submitted that this Court may itself examine the material on record which would show that the respondents satisfy both the conditions. Learned counsel for the appellants on the other hand strongly repelling this submitted that the figures of students shown by the respondents are inflated to qualify for more teachers and this inspection and scrutiny has yet to be done by the authorities including the verification of qualifications of the teachers. Learned counsel for the respondents then submitted that let the appellants accept the figures found by their own inspections and decided the issue in question. Even this was repelled by the learned counsel for the appellants by submitting that in the two inspections made by the Assistant District Inspector of Schools and the District Inspector of Schools, which is also submitted by the learned counsel for the respondents, on one occasion the school was closed and on the other it was when the High School examination was going on, which would not give the correct picture. Students found giving examination for High School in increased number cannot be construed as the strength of students in Class Xth as in the examination, a large number of failed students also appeared, who under the relevant rules cannot be enrolled as regular students.

27. Submissions were also made by the learned Senior Counsel for both the sides with regard to the minimum qualifications and disqualification of teachers in question with reference to the rules and circulars but we do not propose to advert to those for the reason we are recording hereunder.

28. It is not in dispute in this case that after the management sent its letter dated 6-8-1992 for the approval of its 31 staff, viz., both teaching and non-teaching staff, both the District Inspector of Schools and the Secretary of the Board sought for certain information through their letters dated 21-9-1992. Instead of sending any reply, the management filed the writ petition in the High Court, leading to passing of the impugned orders. Thus, till this date the appellant-authorities have not yet exercised their discretion. Submission for the respondents was that this Court itself should examine and decide the question in issue based on the material on record to set at rest the long-standing issue. We have no hesitation to decline such a suggestion. The courts can either direct the statutory authorities, where it is not exercising its discretion, by mandamus to exercise its discretion, or when

exercised, to see whether it has been validly exercised. It would be inappropriate for the Court to substitute itself for the statutory authorities to decide the matter.

29. In the impugned orders, the High Court committed many manifest errors and was swayed by what preceded the present question, viz., inordinate delay in the recognition as a High Madrasah. That chapter was a closed chapter after granting recognition as a High Madrasah. Reference or the background that precedes the present issue may have relevance but to conclude on the said background without adverting to the question in issue cannot be sustained.

30. On a perusal of the impugned order, we do not find that any consideration was given in the impugned order on the issue in question. This part, the High Court disposed of the main appeal on the date not fixed for the same, while disposing of the application. It seems that in the background of the anxiety of the management, in view of the various proceedings undertaken including contempt proceedings for implementing the learned Single Judge's order, the Court, instead of adverting to the question in issue, concentrated more to see the said 31 persons be approved within the specified time. As we have held above, without the statutory authority applying its mind for their approval and the impugned order not adjudicating the issue in question how could the impugned orders be sustained. The remote suggestion by the learned counsel for the respondents of mala fide also cannot stand as we do not find, firstly, any such allegation on record nor has any such person by name been impleaded as a party.

31. Finally, we accept the suggestion of the learned Senior Counsel for the respondents that in case the matter is to be decided by the authorities instead of leaving this matter for parties to go to the High Court again after such adjudication, if so advised, this matter be kept pending in this Court so that the matter may be finally decided here instead of the matter taking a long circular route again.

32. Accordingly, we direct the authorities concerned to decide the aforesaid question raised by making any inspections, as they deem fit and proper, after giving due opportunity to the management, decide the matter within four months and place its decision before this Court within three weeks thereafter, after giving a copy of the same to the management.

33. Let this case be listed after the aforesaid period for final disposal.