

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 23416 of 2024

Managing Committee, Vidya Vikash High School (H.S.) and Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners : Mr. Kamalesh Bhattacharyya, 1d. Sr. Adv.
: Mr. Ashim Kumar Haldar

For the State : Mr. Sirsanya Bandyopadhyay
: Ms. Tapati Samanta
: Mr. Arindom Ghosh

Heard on : **17.06.2026**

Judgment on : **11.08.2026**

Rai Chattopadhyay, J. :-

1. A letter of the District Inspector of Schools (Secondary Education), Barrackpur, North 24 Parganas /the 3rd respondent [hereinafter mentioned as "the DI"], dated August 11, 2023 and the letter of the Commissioner of School Education, West Bengal/ the 2nd respondent, dated August 2, 2023, which preceded the letter of the DI as stated above, have been assailed in the instant writ petition.
2. The impugned letter of the DI is with regard to the subject matter of approval of appointment of 4 newly recruited assistant teachers and 2 Group-D staff [the petitioners No.4 to 9 herein] of the addressee school [the petitioners No.1 to 3 herein].
3. The DI writes in the impugned letter dated August 11, 2023, inter alia that, approval of appointment cannot be granted in favour of the petitioners, in terms of letter issued by the 2nd respondent

dated August 2, 2023 as the school authority [writ petitioners Nos.1 to 3] has failed to submit the *Minority Educational Institution Status Certificate*, from the competent authority, as prescribed in Notification No. 378-MD dated April 5, 2012 [herein after referred to as “No. 378”]. Advice has been given to take steps to obtain such a certificate, in order to enjoy any privileges as a minority institution.

4. The 2nd respondent writes in his letter dated August 2, 2023, regarding subject matter of status of the petitioner No.1/school. It is written inter alia that, the Supreme Court, in order dated August 4, 2022 [in SLP (C) No. 8861 of 2021] has granted liberty to the petitioner school to take appropriate proceedings in the issue of minority status; the DI has been directed to verify if the school has obtained a *Status Certificate* from the competent authority as prescribed in notification No. 378; that, if no such *Certificate* has been obtained by the institution, it ought not to enjoy any benefit and privilege of a minority school, though it may take steps to obtain such a *Certificate*, in accordance with the law.
5. Challenging those orders of the 2nd and 3rd respondents respectively, the school as well as the newly appointed teachers and nonteaching staff thereof, have filed the instant writ petition together. In the writ petitioner, the petitioners have prayed for the reliefs that the impugned letters dated 4th and 11th August, 2023, respectively by the 2nd and 3rd respondents may be set aside; appointments of writ petitioners No.4 to 9 may be directed to be approved with effect from December 1, 2022, with all consequential benefits and against sanctioned vacant posts in the said school; that the petitioner school may be permitted to proceed with recruitment process for the remaining 17 sanctioned vacant posts which has already been initiated by virtue of publication of advertisement in newspapers on November 2, 2022.

6. This case has a long standing chequered back ground. The Court is principally confronted with a question here with regard to whether the petitioner school can be treated to be a linguistic minority institution to have the protection under Article 30 of the Constitution of India and privilege to be governed under the Special Rules, promulgated for the minority institutions in the country. May the Supreme Court's order dated August 4, 2022 in SLP (C) No. 8861 of 2021, may be looked into at this stage. The petitioner school filed for *Special Leave to Appeal*. Relevant portion of the order is quoted bellow:

" we do not find any merit in this case, which is accordingly dismissed.

At this stage, Mr. Nikhil Nayyar, learned senior counsel appearing for the petitioners submits that the High Court was not justified in rendering its opinion insofar as the minority status of the petitioner-school, under Article 30 of the Constitution of India, is concerned.

The High Court has held that no plea was made by the petitioner-school in the writ petition in this regard.

Therefore, any observation relating to this question, if any, made in the impugned order, is set aside reserving the liberty to the petitioners to take appropriate proceedings, in this regard."

7. Therefore, **firstly**, the Supreme Court has decided about whether the petitioner/school can claim minority status or not, in negative, by setting aside any observation relating to the said question, in the order of High Court, impugned before it. The Supreme Court has also directed the school to take appropriate proceeding, in this regard. Undoubtedly this order of Supreme Court is final and binding on the school.

8. Next is that the *appropriate proceeding* as directed by the Supreme Court in the said order for the school is that as prescribed in notification No. 378. In two separate '*Parts*' the said notification has made provisions for *a new minority institution* and *an existing educational institution*, that is, under '*Part-I*' and '*Part-II*' respectively.
9. '*Part-II*' consists the provisions as follows:

“Part-II

Minority Institution Status Certificate for existing educational institution.

2. Criteria to be fulfilled by a recognised educational institution for receiving Minority Educational Institution Status Certificate:

- (a) The educational institution must have been established and administered by the minorities to serve the interests of the concerned minority community.
- (b) An educational institution which a minority community has established but has subsequently relinquished responsibility of management to other minority or non-minority, cannot acquire such status. The institution must have been established by and always be administered by the minority community.
- (c) If an organization sponsors the educational institution, such organisation shall get registered as a Society/Trust/Committee/Association comprising 100% members belonging to that minority community to which they claim to belong.
- (d) The aims and objects of the educational organisation incorporated in its memorandum/by-laws etc. shall clearly specify that it is meant primarily to serve the educational interests of the minority community to which they claim to belong, in letter and spirit.
- (e) While admitting students in the Educational Institution, priority shall be given to the eligible students of the concerned minority community administering the institution maintaining transparency in admission and the right of admission of a student of the concerned minority community shall not be curtailed for admitting a general category student.
- (f) The institution, having classes between class-I to class-VIII, has already obtained a certificate of recognition from the concerned authority under sub-section (1) of section 18 of the Right of Children to Free and Compulsory Education Act, 2009.

(g) The institution having classes between class-I to class-VIII shall have to fulfil the conditions given under sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009.

(h) In the case of an aided educational institution, such institution has already obtained a "no objection certificate" from the Competent Authority empowered by the respective Department and also has fulfilled conditions, if any, as may be specified in such certificate.

3. Application for receiving Minority Educational Institution Status Certificate:

(a) A person/organization desirous of obtaining Minority Educational Institution Status Certificate for an existing institution shall make an application in the proforma given in Annexure-II along with necessary documentary evidence, affidavits of undertakings etc. in support of their claim to the Competent Authority in the Department to which the subject matter of the institution belongs. An unrecognized educational institution shall not be eligible to apply for Minority Educational Institution Status Certificate.

(b) The application shall be examined and disposed of after giving an opportunity of hearing by the Competent Authority within 90 days of the receipt of application complete in all respect.

(c) An institution established on the basis of "no objection certificate" so granted by the Competent Authority may also apply for Minority Educational Institution Status Certificate in the proforma given in Annexure-II on recognition and such application will be given priority and also be disposed of within 60 days by the Competent Authority in the department concerned.

(d) If an application is rejected, the Competent Authority shall inform the applicant about such rejection and reasons thereof."

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"7. General effects after receiving Minority Educational Institution Status Certificate:

(a) Reservation policy for Scheduled Castes and Scheduled Tribes and Other Backward Classes shall not apply in recruitment of Teachers and Staff in Minority Educational Institutions.

(b) That grant of Minority Educational Institution Status Certificate will not *ipso facto* make an unaided educational institution eligible for receipt of Government aid/grants which will be guided by the general norms concerning such aid/grants.

However, there shall be no bar for the State Government to provide financial assistance to such Institution for the purpose of educational enlightenment and uplift of the Minority community which will be guided by the general norms concerning such financial assistance.

(c) Stipend/Scholarship and other such benefits may be allowed to students of such Institution as per Government norms.

(d) There shall be no discrimination for such minority educational institution for providing other aids by the Government in consonance with the spirit of article 30(2) of the Constitution of India.

(e) The Minority Educational Institution after getting such status from the Competent Authority shall have all rights as granted under section 10A of the National Commission for Minority Educational Institutions Act 2004.

(f) Grant of Minority Educational Institution Status Certificate will not *ipso facto* make an unaided educational institution eligible for claiming affiliation from any University, which will be guided as per the rules and eligibility criteria concerning such affiliation of the concerned University.”

**“Annexure – II
(See Part-II)**

To
The Competent Authority,

Deptt.,
Government of West Bengal,

**RE: APPLICATION FOR MINORITY EDUCATIONAL INSTITUTION STATUS
CERTIFICATE**

1. (a) Name and address of the Institution/Society/Trust :

(b) Details of the staff working therein:

(c) Name & Address of the President / Secretary of the Trust / Society :

(d) The year of establishment of the Trust / Society :

(e) Name of the Trust / Society / Charitable Organisation / Others who has established the institution :

(f) Purpose for which the institution was established – relevant extract of the memorandum :

(g) Students from which community the institution started for :

2. Whether the application is based on religious or linguistic Minority (give details):

3. Details pertaining to the person/Organization/Society / Trust which is administering the institution:

(e) Name and Address of the Society / Trust :
(f) Whether it is registered (attach a copy of the certificate of registration) :

(g) Name & Address of the Founding Members / Mutwallis / Trustees and their religion :

Sl No.	Name	Office Status	Occupation	Address	Religion
1					
2					
3					
4					
5					
6					
7					

(h) Whether the Memorandum of Association of the person/Organization/Society/Trust has been amended at any time and if yes, attach the amendments :

4. Details pertaining to the Institution :

(a) The year in which the institution has been established :

(b) Percentage of the students from the minority community presently studying in the Institution :

(c) Total No. of students belonging to minority community for which the Institution was initially founded : (Example -- a Christian school will specify

(d) Number of needy students belonging to minority communities (percent) receiving - :

a) Scholarship :

b) Annual Book Grant :

c) Annual Uniform Grant :

(e) Name & Address of the present trustee / members of the Governing Body and their religion :

(f) If the institution is recognised / affiliated to any recognised University / Council / Board etc. provide details :

(i) Whether the recognition / affiliation of institution has been withdrawn by the Competent authority at any time. If yes, on what grounds?

(ii) Whether the name of the institution or its administration has changed since its inception and if so the details there of:

(g) If the institution is not affiliated to any recognised University then provide the name of the University whose programme of studies is followed therein :

(h) If no objection certificate was granted earlier by the Competent Authority, give details :

(i) Details of conditions fulfilled as required under sub-para (d) of para 9 :

(j) Whether certificate of recognition has been obtained from the concerned authority by making an application under sub-section (1) of section 18 of the Right of Children to Free and Compulsory Education Act, 2009 (give details) :

(k) Whether "no objection certificate" has been obtained from the appropriate authority under sub-para (h) of para 2 (give details) :

DECLARATION

I,

hereby aver that the particulars furnished above are true to the best of my knowledge and that if any detail is found on verification / inspection to be otherwise, the institution shall forfeit the minority certificate awarded to it. The decision of the Competent Authority in this regard shall be final.

Date: _____

(Signature of the applicant)

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1. These guidelines shall come into force on the date of its publication in *The Official Gazette*.

Bengal.”

By order of the Governor,
[ILLEGIBLE],
Chief Secretary to the Govt. of West

- 10.** Therefore, notification No. 378 consists guidelines for grant of *no objection* certificate and *Minority Educational Institution Status Certificate* to a minority educational institution. The said

notification derives source from the statutes namely, section 10 of the National Commission for Minority Educational Institution Act, 2004 and section 18(1) of the Right of Children to Free and Compulsory Education Act, 2009.

- 11.** According to section 10 of the Act of 2004, any person who desires to establish a Minority Educational Institution may apply to the Competent Authority, for grant of *no objection certificate* for the said purpose. Section 18(1) of the Act of 2009 provides that no school, other than a school established, owned or controlled by the appropriate government or the local authority, shall, after commencement of the said Act, be established or function without obtaining a certificate of recognition from the concerned authority by making an application in prescribed form and manner.
- 12.** Therefore, **secondly**, by virtue of the statutory provision as above, after coming into force the Act of 2009, status of an existing minority school is barred to be so, which has not applied for and not obtained a certificate of recognition from the concerned authority, as per provision under the said Act. Let it be mentioned that the particular provision as above, of the Act of 2009, has not been challenged by the petitioners in the instant writ petition. Admittedly in this case no such application has been filed before or status certificate has been obtained by the petitioner institution, from the competent authority as a minority institution already existing and functioning, at the time of coming into force of the Act of 2009.
- 13.** The writ petitioners' submissions are twofold in this case. Firstly that, for all the practical purposes for this age-old institution, the State has recognised its status as a linguistic minority institution. In this regard, Mr. Kamalesh Bhattacharyya, learned senior counsel for the petitioners has referred to some documents

annexed with the writ petition. He says that in the letter dated December 31, 1979, the then Director of School Education West Bengal has directed the District Inspector of Schools, for inspection of the school and to furnish a report for recognition of the said school, acknowledging the same as a Hindi Medium School set up by the linguistic minorities as a Class-X Hindi Medium High School, with effect from January 1, 1979. Another letter dated February 12, 1980, has been referred to in which the same office writes to the DI again about the roll strength of the school in connection with its recognition as a school set up by the linguistic minorities as a Hindi Medium High School. The petitioners state that in a subsequent letter dated March 31, 1980, minority status of the school has been similarly acknowledged by the respondent.

- 14.** Observation made in the Inspection Report dated March 24, 1980 is also relied on, which is as follows:

“Observations: -

According to the declarations furnished by three Ward Commissioners of Naihati Municipality (encle – 1) there are about a lakh of people in and around the area. Most of these people are industrial workers and belong to Hindi speaking minority community here. There is the possibility of the school being an ideal institution if it is recognised as a Secondary Institution. The case may be favourably considered.”

- 15.** With reference to letter dated February 1, 1983, by the West Bengal Board of Secondary Education, it has been submitted that the authority has recognised the school as a Hindi Medium school, in which the medium of instruction and 1st Language has to be Hindi.
- 16.** Mr. Bhattacharyya, learned senior counsel has further placed strong reliance to a notification dated September 23, 2011, issued by the Minority Affairs and Madrasah Education Department to submit that in the same, such residents of the State whose mother

tongue is Hindi, have been recognised and declared as Linguistic Minorities in West Bengal. Therefore, according to the writ petitioners, the school established and run by the recognised Linguistic Minority community in the State, ought to have naturally been treated as a Linguistic Minority institution, thereby recognising all its special rights and privileges under the Constitution and the Special laws.

17. Secondly, Mr. Bhattacharyya has submitted that on three occasions, vide the orders dated December 28, 1995, February 7, 1997 and April 13, 2000, a total of 34 posts of teachers and 3 non-teaching staff have been sanctioned by the authority for the institution. Additionally, 23 posts of teachers and 1 post of non-teaching staff has been sanctioned vide the order dated December 18, 2015. Accordingly, the said institution, by publishing an open advertisement and initiating a due and thorough recruitment proceeding, has recruited teachers and non-teaching staff for the institution, prepared panel and appointed the successful persons. That the said panel has duly been sent to the DI, for his approval, which, according to him, the DI is obliged to approve in accordance with the Rules. In this regard Mr. Bhattacharyya, learned senior counsel has relied on notification No. 79-ES/S/10R-14/2013 dated February 3, 2016, that is, *Recruitment Procedure for the Non-Government Aided (excluding DA getting) Recognized Institutions Including Junior High Schools and Higher Secondary Schools established and run by the Minority Community as per Article 30 of the Constitution of India*, [herein after referred to as "No.79"]. He submits that the entire recruitment process has been done by the school thoroughly and strictly in compliance with the provisions under the notification No.79. That, it is as per the provision of the said notification, that the DI is duty-bound to approve service of the appointees, who are the writ petitioners in the instant case.

- 18.** Question is, whether after promulgation of the Right of Children to Free and Compulsory Education Act, 2009 and the notification No. 378, application of those would be optional for any reason, for an institution, which claims itself to be an existing and already functioning minority institution. The answer is given by the Supreme Court in its order dated August 4, 2022, in negative and has redirected the school to take appropriate steps to obtain *Minority Educational Institution Status Certificate*, from the competent authority.
- 19.** The contention that the petitioner institution, being an existing and already functioning institution, was not required to make any application under the Act of 2009 or under Notification No. 378, cannot be accepted. Section 18(1) of the Act of 2009 is couched in mandatory terms and, significantly, does not confine its operation to schools which are proposed to be established after the commencement of the statute. The statutory expression is that no school, other than a school established, owned or controlled by the appropriate Government or local authority, shall, after commencement of the Act, be established or *function* without obtaining the requisite certificate of recognition upon an application made in the prescribed form and manner. Thus, the fact that an institution was already in existence and functioning before the commencement of the Act may have relevance to the procedure to be followed under Part-II of Notification No. 378, which specifically deals with an existing educational institution, but it does not create an exemption from the statutory requirement of making the prescribed application and obtaining the requisite certificate. Indeed, the very incorporation of a separate procedure for an “existing educational institution” in Part-II of Notification No. 378 demonstrates that the State

contemplated such existing institutions as being within the regulatory framework, and not outside it.

20. Equally, the plea of the petitioner that its minority character was anterior to the Act of 2009 and had allegedly been acknowledged by the authorities on several occasions cannot, by itself, dispense with the statutory requirement introduced thereafter. A claim to the protection of Article 30 of the Constitution and the consequential entitlement to the special privileges available to a minority educational institution cannot be equated with a statutory determination or certification of minority educational institution status under the mechanism subsequently prescribed by law. The Supreme Court, while disposing of the petitioner's challenge on August 4, 2022, expressly left the question open and granted liberty to the petitioner-school to take appropriate proceedings in respect of its minority status; pursuant thereto, the school was required to pursue the procedure contemplated by Notification No. 378. In such circumstances, the petitioner cannot contend that the procedure prescribed by the Act of 2009 and Notification No. 378 are not applicable in its case merely because the institution claimed to have been functioning as a minority institution from an earlier point of time. Until the statutory process was undertaken and the requisite status was established in the manner prescribed, the petitioner could not claim, as of right, the privileges and exemptions attached to a minority educational institution. The admitted position that no such application had been made and no status certificate had been obtained assumes decisive significance in this regard.

21. Let it be stated here that the appointees that is, the writ petitioners No.4 to 9 should not be treated as on the same footing as the school management, because the defect appears to lie in the school's failure to comply with the statutory regime concerning

minority status, whereas the appointees themselves have undergone a selection process in good faith and may have had no means of curing that institutional defect. The conclusion with regard to the obligation of the petitioner-school to comply with the statutory regime cannot, result in visiting the individual appointees with the entire consequence of the omission attributable to the institution or its appointing authority. The petitioners No. 4 to 9 are not shown to have been responsible either for the failure of the school to obtain the requisite Minority Educational Institution Status Certificate or for its decision to proceed with the recruitment treating itself as a minority institution. On the contrary, the materials placed before the Court indicate that the appointments were made pursuant to a recruitment process undertaken by the school against sanctioned posts and that the appointees were selected and appointed upon completion of such process. If, therefore, the recruitment process is ultimately found incapable of receiving statutory approval solely because the school failed to comply with the statutory requirements governing its claim to minority status, the appointees, who had no role in such non-compliance, ought not ordinarily to be made to suffer a consequence which they neither occasioned nor could reasonably have prevented. The distinction between the legality of the institutional decision to invoke a particular recruitment regime and the bona fide conduct of an individual candidate participating in that process is, in this context, material.

22. The Supreme Court's decision in ***Uma Devi (3) case [Secretary, State of Karnataka and Others versus Uma Devi (3) and others*** reported at **(2006) 4 SCC 1]** and also the subsequent cases, distinguish an illegal appointment from an irregular appointment. Where the appointment is against a sanctioned post and the appointee possesses the requisite qualifications, a

procedural defect does not necessarily place the appointee in the same category as a person whose appointment was fundamentally prohibited by law for the cumulative reasons of incompetence of the institution to appoint, non-availability of sanctioned post and/or qualification deficiency of the particular appointee. In other words, the school's entitlement to invoke the minority recruitment mechanism may fail, without necessarily imputing any illegality, fraud or culpability to the individual appointees. The school cannot claim minority privileges without satisfying the statutory mechanism. The appointees cannot automatically obtain approval under a regime which the school itself was not entitled to invoke. But the appointees should not be treated as wrongdoers or made to bear the entire consequence of the school's omission. The Court can mould relief to preserve their legitimate opportunity, particularly when it transpires that the appointees are qualified, the posts are sanctioned, the selection was bona fide and there is no allegation of fraud or manipulation in the selection process.

- 23.** Hence, this is a fit case to expressly make equitable exception, on the basis of particular facts and circumstances of the case. Therefore, having regard to the peculiar facts and circumstances of the present case, and particularly to the fact that the petitioners No.4 to 9 had participated in the recruitment process in good faith, that their appointments were made against sanctioned posts pursuant to a process undertaken by the petitioner-school, and that there is nothing on record to suggest that the said appointees had any role whatsoever either in the school's failure to obtain the *Minority Educational Institution Status Certificate* or in the decision to proceed with the recruitment by treating the institution as a minority school, I am of the view that the interest of the said appointees deserves to be protected as a matter of the peculiar facts of this case. **Accordingly, the 3rd respondent/DI is**

directed to issue the necessary orders approving the appointments of the petitioners No. 4 to 9.

- 24.** It is made expressly clear that this direction is being issued as an isolated measure, confined strictly to the peculiar facts and circumstances of the present case, and shall not be treated as a precedent or as laying down any general proposition for approval of appointments made by the petitioner-school without compliance with the statutory requirements. Such approval shall also not, in any manner, be construed as an acceptance, recognition or adjudication by this Court of the status of the petitioner-school as a minority educational institution, nor shall it confer upon the school any right to claim the privileges or exemptions available to a minority institution. The petitioner-school shall, in terms of the liberty granted and the direction issued by the Hon'ble Supreme Court by its order dated August 4, 2022, take appropriate proceedings in accordance with law for obtaining the requisite *Minority Educational Institution Status Certificate* from the competent authority. Until such certificate is duly obtained in accordance with the prescribed procedure, the petitioner-school shall not proceed with any further recruitment, including recruitment against any sanctioned vacant post, by invoking or relying upon its alleged minority status. Any advertisement already published for such recruitment and any recruitment process initiated pursuant thereto shall, forthwith, stand set aside and shall not be acted upon any further. It is clarified that the present direction granting approval to the petitioners No.4 to 9 is an exceptional, one-time relief founded upon the peculiar equities of the present case and shall not prejudice or dilute the statutory requirement of obtaining minority status in accordance with law for any future exercise of recruitment by the petitioner-school.

25. Let the 3rd respondent/DI conclude the exercise as directed within a period of 6 weeks from the date of communication of copy of this judgment.
26. The present writ petition WPA No. 23416 of 2024 stands disposed of with the direction as above. Pending application/s if any also stand/s disposed of.
27. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)

Later:

1. At the time of delivery of judgment Mr. Kamalesh Bhattacharya, learned advocate for the petitioners has submitted that date of approval of the petitioner nos. 4 to 9 may be from the date of their joining respectively. He has also submitted that arrear salary may be directed to be paid.
2. In view of the judgment earlier delivered by this Court, the prayer made on behalf of the petitioners appears to be justified.
3. Hence, it is further directed that the respondent no. 3/District Inspector of Schools (SE), Barrackpore shall approve petitioner nos. 4 to 9 with effect from the date of their joining respectively.
4. Arrear salary shall be disbursed to the petitioner nos. 4 to 9 within a period of three months from the date of communication of a copy of this judgment.

(Rai Chattopadhyay, J.)