
(2018) 05 CAL CK 0236
In the Calcutta High Court
Case No : Writ Petition NO. 31136 (W) OF 2017

Abdul Mannan & Ors.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 226
Management of Recognized Non-Government Madrasahs (Aided and Unaided), 2002 —
Rule 3, 4, 5, 6, 7, 9
Apprentices Rules, 1992 — Rule 3(B)(c)(i)

Citation : (2018) 05 CAL CK 0236

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Mousumi Mitra, Sarwar Jahan, Taraprasad Halder, Uttam Kumar Majumdar

Final Decision : Disposed Of

Judgement

Protik Prakash Banerjee, J.

1. A new disease has infected the body politic. The dance of democracy, once a stately waltz, has slowly but surely, changed to a free style epilepsy,

where anything goes. One such allegation has come, most incongruously, to be leveled at what ought to have been the most insulated of places, the

most orthodox of institutions of learning, the â??Madrasahâ?. This forms the leitmotif of the writ petition under Article 226 of the Constitution of India

which has come to be numbered as WP No.31136 (W) of 2017.

2. The writ petitioners are the guardians of their respective children at the Ramnagar High Madrasah (HS). They claim to have attempted to file their

nomination papers for election to the Managing Committee of the said Madrasah, in the category of guardiansâ?? representatives. They allege,

among other things, that after they filed their nomination papers " which too was plagued by tribulations of near-Biblical proportions, but more of that later " some miscreants forcibly took these away from the Head-master and the head-master refused to acknowledge his receipt of the nomination papers. Taking advantage of this forced walk-over, the private respondents, who filed their nominations and were in fact the only candidates for the available posts under the category of guardians' representatives, were declared elected. The writ petitioners challenged this process which they claim make a mockery of elections. This, in short, is the real issue in controversy. Their case came to this court once, and certain orders were passed therein, pursuant where to a hearing was given by the West Bengal Board of Madrasah Education, a statutory body corporate which is the respondent no. 3. An order dated December 13, 2017 was passed by the respondent no. 4 as the President of the respondent no. 3, roundly rejecting their representation. This is the order impugned before me today.

3. I wish I could have been rid of the unpleasant facts with the short recital in paragraph 2 above, but alas! That is not to be. Matters which are apparent from the record and of which I must take note must be narrated in tedious detail, where required. So, let us start from the very beginning, a very good place, I have been assured, from which to start.

4. The respondent no. 6 is the Headmaster of the madrasah in question. Under the provisions of the West Bengal Board of Madrasah Education Act, 1994 as amended, the respondent no. 1 framed the Rules for Management of Recognized Non-Government Madrasahs (Aided and Unaided), 2002.

Under these Rules, the management of a Madrasah is done by a Managing Committee constituted under Rules 3 and 4. These envisage among other things, election to the Managing Committee of such members who are not nominated by designated authorities. Election is to be held in terms of Rule 9 read with Appendix 1 to the said Rules. Under Paragraph 1 of Appendix I, the Headmaster (respondent no. 6) is the Head of the teaching and non-teaching staff in the Madrasah. He has several duties relating to the preparation and communication of the election programme under paragraphs 5 and 6 of the Rules. The election programme is to be in accordance with Form 1(MC) to the Rules, and the respondent no. 6 has the duty to ensure that the

time-gaps prescribed therein are adhered to, except for minor adjustments. Paragraph 3 of the said Appendix I provides that the Head of the Institution

shall be the Scrutiny Officer and one of his duties is issuance to and receiving from candidates, nomination papers and scrutinizing them. The writ

petitioners, who claim to be registered guardians in terms of Rules 5, 6 and 7 of the Rules of 2002, as eligible voters, say that they are eligible to be

nominated and contest for the six positions of guardiansâ?? representatives in the Managing Committee provided for by Rule 3(B)(c)(i) of the said

Rules of 1992.

5. It is their case, that the respondent no. 6 published an election programme which is enclosed as Annexure P/1 to the writ petition and from the said

document it appears that submission of the nomination papers to the head of the institution was fixed for â??8th November, 2017 between 11AM and

2PMâ?. They have pleaded as much in paragraph 4 of the writ petition. This therefore, is a departure from Form 1(MC) which is the statutory and

prescribed form. The statutory prescribed form, at that column, provides that the last date of submission of nomination forms is to be specified,

whereas in terms of paragraph 17 of Appendix 1, sub-paragraph (iv), date of submission of nomination forms is required to be specified, such that

such date should not be less than seven days before the election. Here the election was scheduled to be held on November 19, 2017. So, the minimum

time-limits were maintained from the respective dates but so far as the petitioners were concerned, and the public at large, instead of specifying the

last date of submission of nomination papers, the election programme seemed to indicate that the nomination papers were to be submitted only on

November 8, 2017, between 11am and 2pm. This was certainly a departure, but whether material or not, the other facts would indicate.

6. The petitioners have made out a specific case in their writ petition and also in their representation, which I quote from the relevant paragraphs of

their writ petition: -

Paragraph 6: â??Your petitioners state that in the above situation your petitioners approached the Headmaster of the said Madrasah on 06.11.2017 to

collect nomination papers when the Headmaster concerned informed your petitioners that the nomination papers would be supplied only from 10:00 am

to 11:00 am on 08.11.2017 and filled in nomination papers is to be submitted on the same day, i.e. on 08.11.2017 during 11 am to 2pm.â? Paragraph 7:

â??Your petitioners state that pursuant to said suggestion of the Headmaster, your petitioners on good faith went to the madrasah premises at 10:00

am on 08.11.2017 and collected nomination forms from the Headmaster and after completion of all formalities they duly filed their nominations on

08.11.2017 as intending candidates of the said election for Guardian Category members and the Headmaster concerned asked your petitioners to wait

for some time to collect acknowledgements of such submissions of nominations which were to be issued by him.â??

Paragraph 8: â??Your petitioners state that while they were waiting for such acknowledgements, some miscreants with political ill motive entered into

the office of the Headmaster and snatched the nomination papers of your petitioners from the custody of the Headmaster and compelled the

Headmaster not to issue any fresh nomination paper in favour of the petitioners.â??

Paragraph 9: â??Your petitioners state that in the above situation the petitioners made demand for issuance of acknowledgements in respect of

submissions of their nomination papers when the Headmaster concerned denied to do so taking the plea that since those papers have been snatched

by the miscreants he can do nothing, rather he told that he will proceed on the basis of the nomination papers filed by other persons and if he finds that

number of nomination filed is equal to the number of member from the Guardian Category he will declare them elected uncontested.â??

Paragraph 10: â??Your petitioners state that immediately thereafter the petitioners made detailed representations before the Headmaster of the said

Madrasah as well as before the Officer in Charge of Local Police Station on the same day i.e. on 08.11.2017 intimating the above events and

demanding justice.â??

7. I have gone through the records including Annexure P/2, which are copies of the complaint made to the respondent no. 6 as also the concerned

police officer, and they show receipt on November 8, 2017. These assume great significance, since contrary to the materials on record, the

respondents no.3 and 4 have held that these were made on November 9, 2017. There were representations made on November 9, 2017 of course,

though dated November 8, 2017, but these were to the concerned district inspector of schools, district magistrate and superintendent of police, as appears from Annexure P/3.

8. Apparently, the Headmaster was about to declare the respondents No.7 to 12 as elected members from the Guardians Category, to the managing committee, since they were the only persons who were allowed to file nominations for the six posts in that category.

9. The writ petitioners instituted WP No.27499 (W) of 2017 before this court. A coordinate Bench, by an order dated November 13, 2017, was

pleased to dispose of it by granting liberty to the petitioners to make a complaint by November 22, 2017 to the respondent no. 4 and the respondent no.

4 was directed to take a decision in respect of such complaint within December 6, 2017 after giving an opportunity of hearing to the petitioners or their

authorized representative and the respondent no. 6 therein, or his authorized representative and such other candidates who have already submitted

nomination papers (or their authorized representative) and thereafter communicate its decision to the parties. Very significantly, the coordinate bench

of this Court was pleased to direct

“Till such decision is taken by the President, West Bengal Board of Madrasah Education, the respondent no. 4, the respondent no. 6 is restrained

from taking any decision or further decision on the basis of the election scheduled to be held on November 19, 2017.”

10. Pursuant thereto the complaint made by the writ petitioners was considered by the respondent no. 4, naturally also on behalf of the respondent no.

3. This resulted in the order which bears Memo No. 317 “ Law/R.O./79/17 dated December 13, 2017, issued under the signature of the respondent

no. 4, but showing that it was also on behalf of the respondent no. 3. This is challenged before me in the present writ petition.

11. Affidavits were called for in the present writ petition. While the private respondents no. 7 to 12 indulged in evasive, bare, vague and general

denials, a factual basis which I cannot ignore is that they admitted at paragraph 4(c) that “That as per the said reason order dated 13.12.2017

passed by the President, West Bengal Board of Madrasah Education, the Headmaster of the Ramnagar High Madrasah on 16.12.2017 issued the

certificates in favour of the respondent no. 7 to 12 and declared as winner

uncontested as guardian members.â??

12. On the other hand, the respondents 3 and 4 in their Affidavit-inOpposition categorically admitted, among other things, firstly that the writ petitioners

â??made detailed representations before the headmaster of the said Madrasah and the officer-in-charge of Gazole Police Station, Malda on

08.11.2017 intimating the incident happened at the time of filing nomination papers by them and demand for justice in this matterâ? and furthermore

admitted â??there is no dispute that the madrasah authority conducted election of guardian category strictly not in terms of procedure for holding

election but the same was not affect the whole procedure and accordingly ignored the same and thereby allowed the candidates who have won the

election to form the Managing Committeeâ??.

13. Some of the jagged edges in the order, which give me pause, and which were relied upon by Mr. Sarwar Jahan, Learned Counsel appearing for

the writ petitioner, are summarized below: -

a. The respondent no. 4 persists in speaking of those candidates who had filed nomination and/or were allowed to do so, as â??elected Memberâ?.

He says this on December 13, 2017, when by the order dated November 13, 2017, this court had expressly directed that no decision or further decision

was to be taken on the basis of the election scheduled to be held on November 19, 2017.

b. If the respondent no. 4 holds the persons who had filed nomination to be elected members, that could only be done as â??uncontestedâ? in terms of

Paragraph 18 of Appendix I. Whether this is giving effect to an election which was to be held on November 19, 2017 is doubtful.

c. The entire scheme of the rules and the appendix relating to elections would show, that declaration of results is done only after counting of votes and

counting of votes is done and declaration of the names of the elected members is done in the presence of contesting candidates. Such counting of

votes in favour of contesting candidates becomes necessary if there is more than one candidate for a particular post. If there are six candidates and

only six posts for them, then they are to be declared elected uncontested, and this position of there being no contest is clear when the last date of

withdrawal of nomination is past, and there being as many valid nominations (after scrutiny) as there are posts in that category.

d. Despite the allegation of the writ petitioners in the earlier round, that the headmaster was likely to declare the private respondents herein as elected

‘‘uncontested’’, the coordinate bench in its wisdom did not restrain the respondents from so doing, when considering the self-same allegations of

fact. Only giving effect to the election held on November 19, 2017 was restrained.

e. That means that at best it could be said that the managing committee was not properly reconstituted, since without deciding the complaint made by

the writ petitioners the respondents no.4 and 6 could not give effect to the elections held on November 19, 2017. Nothing restrained the respondent

no.3 from holding the private respondents to be elected uncontested. However, in view of the order of the coordinate bench, the respondent no. 4

ought to have certainly held that the private respondents were uncontested elected members whose election was disputed. That he did not hold so,

shows that he had made up his mind that the uncontested nature of the election of the private respondents was perfectly valid. This does not appear to

be the right frame of mind in which the respondent no. 4 ought to have approached the hearing he was giving, since it certainly does not show

independence, impartiality or lack of bias.

f. Again, while the published election programme as notified to the writ petitioners did not contain the word ‘‘last’’ before the words ‘‘date of

submission of nomination forms’’, since it is not the case of the writ petitioners that they could not file the submission form because of that omission, it

ceases to be material. Of course, it is true, as admitted by the headmaster, that it was not strictly in accordance with Form 1(MC), but it is not a

material defect because by that omission, the rights of the writ petitioners to file their nomination papers was not taken away.

g. Of greater import, perhaps is the submission by the respondent no. 6 headmaster as recorded by the respondent no. 4 in the order of the respondent

no. 4 impugned before me. The respondent no. 4 has recorded the following submissions as having been made by the headmaster: -

‘‘The headmaster, Md. Naushad Ali, was asked to keep his submission first. He stated that on the said date of filing nomination, i.e., 08.11.2017, at

about 12.10pm eleven candidates namely SameraBewa, Zeaul Karim, Ismat Ara Bewa, Md. Rabiul Islam,Rabiul Islam, AminulHoque, Najimuddin

Ahmed, Alauddin, Mojaffar Hossain, Manirajjaman and Iliasuddin submitted their

nomination and thereafter they were preventing others from filing

nomination papers. At about 12.30 pm, three persons entered into his office with six nomination papers for submission and while he was receiving

those nomination papers some persons barged into his office and forcefully snatched those nomination papers and tore them. They kept the door

closed till 2 pm and after 2 pm those persons opened the gate and went out.â??

h. This therefore, completely corroborates the version of the writ petitioners.

i. As I have already recorded above, the same was not denied specifically within the meaning of law by the respondents or any of them in their

affidavits. The private respondents attempted a general denial. The respondents No.3 and 4 in their Affidavit-in-Opposition have made a general

denial and have merely repeated whatever the writ petitioners have said in, among others, paragraph 8 of their petition and have said that except what

appears from records, they deny each and every allegation.

j. In my opinion, to be an effective and specific denial, a respondent must first make a general denial, then a specific denial of every allegation

including, where necessary, setting out the allegation being denied, and then aver, in order to make a strong denial, an assertion of what according to

him or her is the fact. The law is well settled, that â??When an allegation is made with specific averments, the same has to be denied specifically and

is to be asserted on oath with specific statement, but this has not been doneâ? as has been held authoritatively in a Bench Decision of this Court in the

case of Shalimar Paints Ltd. and Othersâ?"vâ?" Andrew Francis and Others reported in 2005 (1) CHN 129.

k. Therefore, I am constrained to hold that on affidavits the writ petitionersâ?? statements, as corroborated by the headmaster, about the snatching of

the nomination papers by miscreants and their preventing the headmaster from issuing fresh nomination papers, even though the time to submit fresh

nomination papers had not expired, stand admitted by non-traverse.

l. Nonetheless, the respondents no.3 and 4 have chosen to disbelieve these facts. I must therefore, advert to the reason why the respondents no.3 and

4 have chosen to disbelieve the version of the headmaster which is also what the writ petitioners have stated.

m. The respondents No.3 and 4 have given reasons galore to disbelieve the version of the headmaster. These range from the headmaster preparing

the report called for by the respondent no. 4 at the time of hearing, instead of keeping the report prepared to the call records of the headmaster not

supporting his claim that he called the officer-in-charge of the Gazole Police Station many times.

n. However, so far as the reason for disbelieving the writ petitioners is concerned, there is only one! The respondent no. 4 has recorded that though

the learned advocate of the writ petitioners had submitted that they had videographed the entire incident, this was not provided to the respondent no. 4.

On the other hand, the respondent no. 4 has recorded that the headmaster's version cannot be believed because the complaint was made on the

day after the incident, as one of the reasons why the events alleged cannot be believed. I have already recorded my finding, by referring to the

records of the case before the court, including the complaint made to the police authorities, that the said complaint was made on November 8, 2017, i.e.,

est, the date of the incident itself.

o. Therefore, the conclusion that confidence is not inspired in the veracity of the statements based on the finding as immediately above, is contrary to

the materials on record and thus perverse within the meaning of law. It cannot be supported by the records. If that finding goes, then the reason for

not finding the statement credible or true, also goes. Without that reason, the order impugned so far as not believing the statements made by the writ

petitioners are concerned, becomes unreasoned. When, therefore, the respondent no. 4 holds that there was no cogent evidence to hold that such an

incident occurred, he has not given any reasons apart from this one absence of submission of the video of the incident. He has not even dealt with the

statements made by the writ petitioners. An unreasoned order, quite apart from being in violation of the order passed by the coordinate bench in the

earlier round of the litigation, is also an anathema to and a gross violation of the basic principles of natural justice and thus in violation of Article 14 of

the Constitution of India. It is a nullity. It must, therefore, be quashed, for the reasons aforesaid.

14. I could have ended the analysis of the jagged edges and the dangling conversation regarding the role of the respondents No.3 and 4 on that note.

Yet judicial conscience drives me to make a further observation. When those who are to protect become predators or ally with the predators, it must

be a sad day for the prey.

15. In the light of my above analysis, the writ petition succeeds in part, to the following extent. The impugned order dated December 13, 2017 passed

by the respondent no. 4 is set aside and quashed. There is none but the respondent no. 4 who can take the decision, so of necessity, the matter is

remanded back to him, even though I have very little faith in his impartiality, for taking a decision afresh in the light of what I have held at paragraph

13(k) above, after dealing with every point raised by the writ petitioners, and allowing all persons concerned the fullest opportunity of being heard, and

by passing a speaking order which must deal with every contention raised, however briefly. The writ petitioners shall be at liberty to produce further

evidence, if so advised, in support of their contentions and every person concerned who is called to the hearing, including the private respondents shall

also have similar liberty to produce such materials and documents and evidence as they are advised, whether in rebuttal or in support. The respondent

no. 4 shall complete the entire proceeding within a period of four months from date. After taking a reasoned decision in the manner mentioned above,

he shall communicate to the writ petitioners and the private respondents, a copy of his reasoned order, within a period of a fortnight from taking his

decision. From today until a period of a fortnight from the date that the writ petitioner receives a copy of the said reasoned order passed by the

respondent no. 4, none of the respondents no. 7 to 12 both inclusive, will be entitled to act as members of the Managing Committee in the category of

guardiansâ?? representatives.

16. The writ petition is disposed of as aforesaid. There shall be no order as to costs.