

(1982) 06 CAL CK 0033
In the Calcutta High Court
Case No : F.M.A.T. No. 234 of 1982

Administrator, West Bengal Board of Secondary Education
and Others

APPELLANT

Vs

Dr. Abinash Chandra Bhadra and Others

RESPONDENT

Date of Decision : 03-06-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 226

Citation : AIR 1983 Cal 203

Hon'ble Judges : Monoj Kumar Mukherjee, J; M.M. Dutt, J

Bench : Division Bench

Advocate : A.P. Chatterjee and A.N. Choudhury, for the Appellant; Saktinath Mukherjee and Madhusudan Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J .

1. This appeal has been preferred by the State of West Bengal and three others against the judgment of B. C. Ray, J. dated Jan. 11, 1982, whereby the learned Judge made absolute the Rule Nisi issued on the application of the respondents under Article 226 of the Constitution.

2. The respondents, who were the writ petitioners, are the members of the Managing Committee of Udayan Institution for girls, situate at 16, Gomes Lane, Calcutta. It is the case of the respondents that the said school was founded by respondent 4, Shri Prabati Charan Sen Gupta. The school was recognised as a Class X school by the West Bengal Board of Secondary Education, hereinafter referred to as the Board, in the year 1965. The recognition was extended from time to time. After the special constitution of the Managing Committee of the school was approved by the Board, the Managing Committee of the school was constituted on July 2, 1967 with the respondents as the members thereof. After the Management of the Recognised Non-Government Institutions (aided and

unaided) Rules, 1969 was framed, hereinafter referred to as the said Rules, the school made an application on Sept. 22, 1969 for the approval of the special constitution of the Managing Committee of the school under Rule 8 (2) of the said Rules. It appears that the board allowed the Managing Committee to continue until further direction or decision of the board. On Sept. 23, 1969, the Director of Public Instructions, West Bengal, recommended the approval of the special constitution of the school. Thereafter, an inspection of the school was held by the District Inspector of Schools, and he submitted a report. On such report, the Director of Public Instructions withdrew his recommendation for the approval of the special constitution of the Managing Committee of the school and recommended the suppression of the Managing Committee on Feb. 4, 1975. Pursuant to the said recommendation, the President of the Board issued an order dated Dec. 18, 1975 superseding the Managing Committee of the school and appointed one Shri P. C. Roy Chowdhury, Administrator, to take charge of the school.

3. Being aggrieved by the said order of supersession, the respondents instituted a suit being Title Suit No. 2223 of 1975 before the 8th Bench, City Civil Court, Calcutta, against the Board and its President and Deputy Secretary and the said Administrator, P. C. Roy Chowdhury, inter alia, praying for a declaration that the said order of supersession was illegal and invalid and for a permanent injunction restraining the defendants from giving any effect or further effect to the said order of supersession and from in any manner interfering with the functions of the plaintiffs, (the respondents herein) and the members of the Managing Committee of Udayan Institution for Girls. During the pendency of the suit, on May 29, 1976, the order of supersession dated Dec. 18, 1975 was withdrawn and recalled and a fresh order of supersession was made by the President of the Board on the ground of expiry of the term of the Managing Committee of the school. By the said order, the said P. C. Roy Chowdhury was again appointed Administrator of the School. Upon the withdrawal of the previous order of supersession and the passing of a fresh order of supersession, the respondents, by an amendment of the plaint challenged the subsequent order of supersession. It is the case of the appellants that the Administrator, after he had taken over charge of the school on June 6, 1976, was obstructed by the respondents in discharging his duties as the Administrator and, accordingly, he shifted the school from 16, Gomes Lane, Calcutta to 16, Noor Mohammad Lane, Calcutta on Jan, 11, 1977. It appears that on Jan. 21, 1978, the Board made a publication in the Ananda Bazar Patrika, the English rendering of which is as follows :--

"The address of the Udayan Institution for Girls, a girls school affiliated to the Board, is at 16, Noor Mohammad Lane, Calcutta-9. Any other school of the same name elsewhere does not have the affiliation of the Board."

The respondents made two applications for temporary injunction, one on June 22, 1976 and the other on Jan. 28, 1977. The nature of injunction that was prayed for in the applications will appear from the order of the learned Judge

allowing the applications stated hereafter. The case of the respondents was that the Administrator never assumed charge of the school, and that the school was never shifted to 16, Noor Mohammad Lane, Calcutta. It was alleged that the Administrator started a new school under the identical name at 16, Noor Mohammad Lane, Calcutta, with the help of some ex-teachers of the school. It was further alleged that no paper, document or any other article was shifted to the new address.

4. The learned Judge, 8th Bench, City Civil Court, Calcutta by his Order No. 26, dated Jan. 10, 1979 disposed of both the applications for temporary injunction which were filed by the respondents. It was held by the learned Judge that the Administrator failed to prove that he had assumed charge of the school on June 3, 1976 or that he had been administering the same since then as alleged. It was observed by the learned Judge that under Rule 8 (3) of the said Rules, an Administrator could function for six months and his term might be extended by six months more. So, the Administrator had no locus standi after May 29, 1977, that is, after the expiry of one year from the date of his appointment on May 29, 1976. Further, it was held by the learned Judge that the respondents had made out a prima facie case against the validity of the order of supersession and appointment of the Administrator, dated May 29, 1976, of the President of the Board. Upon the said findings, he allowed the application for temporary injunction filed on June 22, 1976 restraining the defendants, that is, the Board and its officers from interfering with the functioning of the respondents as members of the Managing Committee of Udayan Institution for Girls at 16, Gomes Lane, Calcutta and from carrying on the management and day-to-day administration of the said school. Further, the said P. C. Roy Chowdhury was restrained from acting as Administrator of the said school till the disposal of the suit. On the second application filed on Jan. 28, 1977, the learned Judge granted a temporary injunction restraining the defendants from running a girls' school under the identical name of "Udayan Institution for Girls" at 16, Noor Mohammad Lane, Calcutta, or at any other place till the disposal of the suit and from holding out to the public that Udayan Institution for Girls had been shifted from 16, Gomes Lane, Calcutta to 16, Noor Mohammad Lane, Calcutta.

5. Being aggrieved by the said order of temporary injunction, the Board preferred an appeal to this Court being F. M. A. No. 276 of 1979. This Court, after considering the facts and circumstances of the case and the submissions made on behalf of the parties, upheld the order of the learned Judge, 8th Bench, City Civil Court, Calcutta, in so far as it restrained the defendants-appellants from interfering with the respondents' management and the running of Udayan Institution for Girls at 16, Gomes Lane, Calcutta, by virtue of the order of supersession, pending the disposal of the suit. The order of the learned Judge, inter alia, restraining the defendants in the suit from running a girls' school under the identical name at 16, Noor Mohammad Lane, Calcutta, was set aside. By the same order, this Court disposed of an application of the respondents that was filed by them in the said appeal praying for payment of dearness allowance

to the teachers of the school at 16, Gomes Lane, Calcutta, and the remission of the tuition fees of students reading from Class V up to Class VIII. It may be mentioned here that time the State Government was paying the dearness allowance of the teachers of all recognised secondary schools teaching up to Class X and made the education of children free from Class V to Class VIII. In view of that, the respondents made the said prayer, and this Court directed the Director of Secondary Education (Women) to pay to the teachers and the members of the non-teaching staff of the Udayan Institution for Girls at 16, Gomes Lane, Calcutta, the dearness allowance with effect from Jan., 1977. So far as the tuition fees for students reading from Class V to Class VIII were concerned, this Court directed that the same should be paid by the Director of Secondary Education (Women) after the disposal of the suit, if such disposal was in favour of the respondents. The learned Judge, 8th Bench, City Civil Court, Calcutta, was directed to dispose of the suit as expeditiously as possible and if it was not otherwise inconvenient for him, he was directed to dispose of the same by the end of Nov. 1979.

6. Despite the direction of this Court to dispose of the suit by the end of Nov. 1979, it is still pending. It is the case of the respondents that several adjournments had been taken on behalf of the said P. C. Roy Chowdhury, who was permitted to be examined on commission, on the ground of his illness. It appears from a Circular dated Oct. 16, 1979 issued by the Government of West Bengal that with effect from Jan, 1, 1980 education of all children in West Bengal was made free up to and including Class X in recognised secondary schools. It was directed that no tuition fees should be realised with effect from Jan. 1, 1980 from the boys and girls reading in Classes IX and X by schools which were admitted to the scheme. It may be mentioned here that prior to the said circular education of children in West Bengal was already made free from Class V to Class VIII. The Government agreed to give grants-in-aid as compensation for the loss of tuition fees to all recognised secondary schools. By another Circular of the Government dated June 3, 1980 it was directed that with the introduction of free education up to Class X with effect from Jan. 1, 1980 in West Bengal, the State Government sanctioned grants for payment of the entire salary of the approved teaching and non-teaching staff of recognised non-Government secondary schools. The Government also sanctioned other grants from time to time to such institutions.

7. After the said circulars were issued, the respondents made a representation to the District Inspector of Schools (Secondary Education), Calcutta, for payment of the salary of all the members of the teaching and non-teaching staff of the Udayan Institution for Girls at 16, Gomes Lane, Calcutta. In the said representation, it was also mentioned that the Managing Committee of the school had also accepted the scheme of free education to the students of Classes IX and X from the new session of 1980. As no reply to the said representation was given by the District Inspector of Schools, the respondents moved an application before this Court in the said appeal, being F. M. A. No. 276 of 1979, praying for a

direction on the Deputy Director of Secondary Education (Women), West Bengal and the District Inspector of Schools (Secondary Education) for payment of tuition fees. The said application was disposed of, inter alia, by an order granting liberty to the respondents to make an application before the City Civil Court Judge in the said suit. Such an application could not be made by the respondents pursuant to the said liberty granted to them by this Court inasmuch as the State of West Bengal or the Deputy Director of Secondary Education (Women), West Bengal is not a party in the suit. Accordingly, they moved a writ petition before this Court, inter alia, praying for the payment of salary with dearness and other allowances of 18 teachers and also of the members of the non-teaching staff of the school, namely, Udayan Institution for Girls at 16, Gomes Lane, Calcutta. As stated already, the learned Judge allowed the said prayer and made absolute the Rule Nisi. Hence this appeal by the State of West Bengal and its said officers.

8. Mr. Arun Prokash Chatterjee, learned Senior Standing Counsel appearing on behalf of the appellants submits that the respondents who were the writ petitioners have no legal right to claim payment of salaries, dearness and other allowances of the members of the teaching and non-teaching staff of Udayan Institution for Girls at 16, Gomes Lane, Calcutta. The contention of the learned counsel is that only the recognised secondary schools are entitled to such grants and, as the said school represented by the respondents has not been recognised by the Board, the respondents have no legal right to lay any such claim.

9. There can be no doubt that Udayan Institution for Girls at 16, Gomes Lane, Calcutta, was a recognised secondary institution. After the Administrator had started a school under the identical name at 16, Noor Mohammad Lane, Calcutta, the Board made a publication in the Ananda Bazar Patrika that only the school at 16, Noor Mohammad Lane, Calcutta, was affiliated to the Board and any other school of the same name elsewhere did not have the affiliation of the Board. No order of the Board withdrawing the affiliation of Udayan Institution for Girls at 16, Gomes Lane, Calcutta, has been produced before us or annexed to the affidavit of the appellants. To recall or withdraw the affiliation or recognition is one thing and to say that a particular school does not have the affiliation is another thing. In the absence of any specific order withdrawing the affiliation or recognition of Udayan Institution for Girls at 16, Gomes Lane, Calcutta, the said publication in the Ananda Bazar Patrika has no force and is of no effect whatsoever. This Court in the said appeal being F. M. A. No. 276 of 1979 restrained the Board and its officers from interfering with the functioning of the Managing Committee of the Udayan Institution for Girls at 16, Gomes Lane, Calcutta. That order is still binding on the Board and the Board had no jurisdiction whatsoever to withdraw or recall the affiliation or recognition of the said school, for such withdrawal would, in our opinion, mean interference with the functioning of the Managing Committee of the school under the Board. The most significant fact that may be pointed out is that the Board have not preferred any appeal against the order of the learned Judge making the Rule Nisi absolute. It does not, therefore, in our opinion, lie in the mouth of the State

Government and its officers to say that the Udayan Institution for Girls at 16, Gomes Lane, Calcutta is not a recognised secondary school under the Board.

10. It is true that no one has any legal right to claim any grant-in-aid or payment of salaries, dearness allowance etc. of the members of the teaching and non-teaching staff of any school, but when the Government has introduced a scheme for free education of boys and girls up to Class X in West Bengal and directed all recognised secondary schools not to realise tuition fees from students, and the respondents having accepted the scheme and given effect to the same, the Government is precluded from making a discrimination between Udayan Institution for Girls at 16, Gomes Lane, Calcutta and other recognised secondary institutions. Such a discrimination will, undoubtedly, be violative of the provision of Article 14 of the Constitution. In the circumstances, we do not think that there is any force in the contention of the learned Senior Standing Counsel that the respondents have no legal right to move the writ petition praying for a direction on the Government to make payment of salaries, dearness and other allowances of the members of the teaching and non-teaching staff of their school. Similarly, for the same reasons, the contention that the respondents are trying to enforce the administrative instructions as contained in the said circulars of the Government relating to the payment of the salary and dearness allowances of teachers and members of the non-teaching staff of the school in lieu of the remission of tuition fees of students, cannot be accepted.

11. Our attention has been drawn by the learned Senior Standing Counsel to two other suits filed by the respondents. It appears that the respondents filed a suit being T. S. No. 435 of 1978 in the City Civil Court, Calcutta, against the Administrator of the Board, the said Sri P. C. Roy Chowdhury and one Sm. Jharna Sen as defendants, inter alia, praying for a declaration that the defendants were incompetent and had no right, title or authority to reconstitute the Managing Committee of Udayan Institution for Girls, 16, Noor Mohammad Lane, Calcutta. The respondents also instituted another suit being T. S. No. 20 of 1976 renumbered as T. S. No. 45 of 1978, inter alia, praying for a declaration that Jharna Sen and others had absented themselves from Udayan Institution for Girls at 16, Gomes Lane, Calcutta, and that they were no longer in service of the said school. Both the said suits were dismissed-- the former on June 1, 1979 and the latter on Sept. 14, 1979. In the meantime, on May 6, 1979, the Managing Committee of Udayan Institution for Girls at 16, Noor Mohammad Lane, Calcutta, was constituted. It is contended by the learned Senior Standing Counsel that the decisions in the above suits would operate as res judicata in the present writ proceedings and in the said T. S. No. 2223 of 1975 which is still pending before the learned Judge, 8th Bench, City Civil Court, Calcutta. No decision of any of the said two suits has been placed before us, nor has the institution of the same been pleaded in any affidavit filed by the appellants, either in the trial Court or before us. It is not known whether the said two suits were dismissed for default or not. Be that as it may, even assuming that both the suits were disposed of on merits, there is no question of res judicata in view of the prayers made in the

said suits which related to Udayan Institution for Girls at 16, Noor Mohammad Lane, Calcutta. Both the said T. S. No. 2223 of 1975 and the present writ proceedings relate to the Udayan Institution for Girls situate at 16, Gomes Lane, Calcutta. In the writ petition, the prayer of the respondents is, inter alia, for a direction upon the Director of Secondary Education (Women) for payment of the salaries, dearness and other allowances of the members of the teaching and non-teaching staff of the said school. Moreover, there is no identity of parties in all these suits and the writ proceedings. In the circumstances, we are unable to accept the contention of the learned Senior Standing Counsel that the decisions in the above two suits instituted by the respondents would operate as res judicata in the said T. S. No. 2223 of 1975 and in the writ proceedings, and that the claim made by the respondents in the writ petition is not maintainable.

12. It is next contended on behalf of the appellants that, in any event, this Court should not grant a temporary mandatory injunction. It is submitted by the learned Senior Standing Counsel that any order that may be passed on the writ petition allowing the prayers of the respondents would tantamount to a temporary mandatory injunction, for the rights of the parties would be finally decided in the said T. S. No. 2223 of 1975. It is, accordingly, contended by the learned Senior Standing Counsel that this Court should not grant a temporary mandatory injunction. In support of this contention, he has placed reliance on a Bench decision of this Court in *Nandan Pictures Ltd. Vs. Art Pictures Ltd. and Others*, . In that case, it has been observed by Chakravarty, C. J. delivering the judgment of the Bench that it is only in very rare cases that a mandatory injunction is granted on an interlocutory application and instances where such an injunction is granted by means of an ad interim order pending the decision of the application itself are almost unknown.

13. In the first place, we do not agree with the learned Senior Standing Counsel that the order that will be passed on the writ petition disposing of the same would be in the nature of a temporary mandatory injunction. A temporary injunction is granted in aid of the preservation of the rights claimed by the plaintiff in the suit pending the disposal thereof. Any order disposing of the suit or finally deciding the rights of the parties cannot be construed to be an order of temporary injunction. Even, when a Court, in disposing of an action, grants an injunction for a specified period directing the defendants to do or perform certain acts cannot be characterised as a temporary mandatory injunction. In the circumstances, the above Bench decision, in our opinion, has no manner of application. Even assuming that the principles laid down in that decision apply to the instant case, still, as has been observed in that case, temporary mandatory injunction can be granted in very rare cases on an interlocutory application. There can be no doubt that if the Government does not make the grant-in-aid including the salaries, dearness allowance, etc., of the members of the staff of Udayan Institution for Girls at 16, Gomes Lane, Calcutta, the said institution will be greatly prejudiced and, may have to be closed. In our opinion, in such a situation, the Court can grant a temporary mandatory injunction on an

interlocutory application. As we have already said, the writ petition is not an interlocutory application nor the order disposing of the same would tantamount to temporary mandatory injunction. The contention of the appellants is, accordingly, overruled.

14. The next point that has been urged on behalf of the appellant is that in view of the order dated July 11, 1979 passed by this Court in the said F. M. A. No. 276 of 1979, the prayer in the writ petition is not maintainable. In the said order, this Court directed that so far as the tuition fees for students reading from Class V to Class VIII were concerned, the same would be paid by the Director of Secondary Education (Women) after the disposal of the suit, if such disposal was in favour of the plaintiff-respondents. It is submitted by the learned Senior Standing Counsel that as per the direction of this Court, the Government grant including salaries, dearness allowances, etc., payable on account of remission of tuition fees will be paid to the respondents only if they succeed in the suit and, as such, the prayer in the writ petition for such a claim is premature and not maintainable. It is true that such a direction was given by this Court but, at the same time, it cannot be lost sight of that this Court also directed the learned City Civil Court Judge to dispose of the suit within four months, that is, by the end of Nov., 1979. As the suit has not yet been disposed of on the ground of illness of the said Sri P. C. Roy Chowdhury, we do not think that the respondents are precluded from laying a claim for the salaries, dearness and other allowances of the members of the teaching and non-teaching staff of Udayan Institution for Girls at 16, Gomes Lane, Calcutta. We are, therefore, unable to accept the said contention made on behalf of the appellants.

15. Lastly, it has been vehemently urged by the learned Senior Standing Counsel that the balance of convenience and inconvenience lies against the respondents. It is contended that if the respondents ultimately fail in the said T. S. No. 2223 of 1975, the appellants would not be able to realise the considerable sum of money that would be paid to the members of the teaching and non-teaching staff of the school in the meantime. We do not appreciate such a contention as advanced on behalf of the Government. The Government is responsible for imparting education to the children of the State, indeed, about 400 girls are reading in Udayan Institution for Girls at 16, Gomes Lane, Calcutta. The payments will be made by the Government to the members of the teaching and non-teaching staff of the said institution and not to the respondents. If no such payment is made on account of salaries and dearness allowance, the said institution will be in great predicament and might be closed to the great prejudice of the girl students reading therein. It may be that the Government and the Board have fallen out with the members of the Managing Committee of the said school, but it is not understandable why the staff and the students of the school should be penalised and made to suffer. In our opinion, the Government has no right to prejudicially affect the education of the 400 girl students reading in Udayan Institution for Girls at 16, Gomes Lane, Calcutta, which would be contrary to the responsibility of the Government to impart education to the children of the State. In the

circumstance, we are firmly of the view that the balance of convenience and inconvenience lies in favour of the respondents for a direction upon the appellants to make the payment as ordered by the learned trial Judge on the writ petition. No other point has been urged in this appeal.

16. For the reasons aforesaid, the judgment of the learned trial Judge is affirmed and this appeal is dismissed. There will, however, be no order for costs.

17. The appellants are directed to make payment of salaries, dearness and other allowances at the rate declared by the Government according to the rules in force with effect from Jan. 1, 1980 up to the month of June, 1982, to the members of the teaching and non-teaching staff of the Udayan Institution for Girls at 16, Gomes Lane, Calcutta, within eight weeks from date and, thereafter, to go on making such payment until and unless it is decided by any Court of competent jurisdiction that they are not liable to make such payment.

Monoj Kumar Mukherjee, J.

I agree.