

(2002) 02 CAL CK 0037

In the Calcutta High Court

Case No : Writ Petition No. 17391 (W) of 2001

Amir Hossain Sardar and Another

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 06-02-2002

Acts Referred:

Constitution of India, 1950 — Article 19, 226

Citation : (2002) 3 CALLT 12

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : K.K. Moitra, Alope Ghosh and Md. Mojun Sk, for the Appellant; Sumit Kr. Panja and Kayeli Bhattacharjee, Tridib Sarkar, Madhusudan Sur and Gangapati Gangopadhyay for the Added Respondent Nos. 6 and 7 and S. Oli Mohammed, for the Respondent

Final Decision : Dismissed

Judgement

A. Lala, J.—This writ petition is made by one Amir Hossain Sardar and Arjahan Halder, claiming to be the President and Secretary of the Managing Committee of the school, challenging the order dated 29.11.2001 passed by the Secretary of the West Bengal Board of Madrasah Education. By such impugned order the Managing Committee of the Madrasah was replaced by the Ad-hoc Committee after the term expired on 31.10.2001.

2. The contention of the petitioners is that before superseding the existing Managing Committee an opportunity of hearing should have been given to the existing Managing Committee. To that, the petitioners have relied upon Rule 8(1) of the Management Rules made for the purpose of running of the administration of such type of institutions. As per Rule 8 of the Management Rules, the Constitution of a Committee shall be subject to the approval of the Executive Committee of the Board and the Executive Committee shall have the power to supersede a committee when as per their opinion the Managing Committee is not functioning properly. By such supersession and Administrator or the Ad-hoc

Committee can be directed to exercise the powers and perform the functions of the committee but as per proviso a reasonable opportunity should be afforded to the committee to present its case before the Executive Committee of the Board.

3. The petitioners have further relied upon a circular being Circular No. 1908 dated 17.9.96 by saying that extension of the tenure of the organising committee of the newly recognised Madrasah can be made under certain exigencies. The reason is to show in the circular that when the upgradation of the Institution was made virtually the existing Managing Committee had become the organising Committee. The petitioners strongly relied upon the judgments reported on 1976 CHN 810 (Sachi Nath Ghosh and Ors. v. West Bengal Board of Secondary Education and Ors.) and 1979(2) CLJ 445 (Paik Para Manindra Memorial High School v. State of West Bengal and Ors.). It appears from the judgment of a single Bench of this Court that it is settled by now that a reasonable opportunity would depend on the facts and circumstances of each case. It has repeatedly been held that rules of natural justice cannot be reduced to a rigid formula or a straight jacket. As per proposition of law, law of natural justice do not require that a personal hearing must be given in every case. However, in the facts and circumstances of the case therein by reason of denial of a personal hearing, the Managing Committee has been denied a reasonable opportunity of stating its case. That being so, the impugned order must be held in contravention of Rule 8(1) of the Rules.

4. The argument of Mr. Aloke Ghosh, learned counsel led by Mr. K.K. Moitra, learned senior counsel, was objected by Mr. Sumit Kr. Panja, learned counsel for the Board. According to him, Rule 8(1) of the Management Rules will not be applicable in the present case. Sub-rule (2) of Rule 8 of the Management Rules will be applicable herein. As per the said Sub-rule (2) the Executive Committee of the Board shall have also the powers to appoint an Administrator or an Ad-hoc Committee in respect of any Institution where the term of the committee is expired and not reconstituted for any reason whatsoever. The reason behind making such submission is that the tenure of the Managing Committee in the instant case has already been expired.

5. It appears to this Court that a representation was made on 13.8.2001 by saying that the tenure of the Managing Committee is going to be expired on 1.10.2001 which is not correct. The exact date of expiry is 31.10.2001.

6. I have gone through the conditions of upgradation of a High Madrasah which has been provided by the Board under Memo No. 390 dated 2.4.2001. One of such conditions is that the Constitution of the Managing Committee as per rules of Management of Non-Governmental Education Institution (aided and unaided) should be completed within six months from the date of receipt of the letter as the existing Managing Committee has been converted to an organising committee in view of the recognition. The penultimate lines of such order or upgradation reads as follows :

"The Board reserves the right to withdraw recognition/upgradation in accordance with the rules if all or any of the above conditions is not fulfilled."

7. Therefore, the order which has been passed by the Board by superseding or replacing the Ad-hoc Committee is just and appropriate. Moreover, replacement cannot be equated with suppression. Sometime it can be equated but sometime it cannot. However, invocation of the writ jurisdiction has been made by the President and the Secretary of the then existing Managing Committee which cannot be adhered to and has been opposed by Mr. Tridib Kr. Sarkar, learned counsel appearing on behalf of the Ad-hoc Committee by saying that they have no locus standi to approach the writ Court under the circumstances.

8. Mr. Panja, learned counsel for the Board, cited two judgments before this Court. Firstly, he cited a judgment in the case of Ajit Kumar Biswas Vs. State of West Bengal and others, , where a single Bench of this Court, even after considering several judgments cited by the petitioners therein, held that the Managing Committee which has already become functus officio by reason of expiry of its normal tenure of three years cannot be given any opportunity to present its case before appointment of Ad-hoc Committee. Secondly, he cited a judgment of a Division Bench of this Court in the case of Paik Para Raja Manindra Memorial High School v. State of West Bengal and Ors., reported in 1979(2) CLJ 445, wherein it has been held that suppression of the Managing Committee did not affect any vested property or proprietary rights of the members of the Managing Committee and therefore, they are not entitled to challenge the impugned order of supersession and appointment of an Administrator of the school. Before summing up I am very candid to say that each and every judgment has to be backed by the facts and circumstances of these cases. The references which have made herein may not be applicable where the persons are victim of the situation and approached the Court for the purpose of getting equitable relief but the persons who have approached before this Court with unclean hands may not get the benefit of the order. One of such documents annexed herein is available at page 35 of the writ petition. There I find that different programme of election for reconstitution of the Managing Committee has been disclosed under the signature of Amir Hossain Sardar one of the petitioners herein on 25.6.2001 and it has been attested by the Teacher-in-charge on 3.11.2001 near about 5 months from such period. The dates of programme given the rein appear to be the sweet will of the signatory. Surprisingly, it appears from page 27 of the writ petition that the said Teacher-in-charge has given a different programme of election on 13.8.2001. Therefore, it is very difficult to construe that the petitioners have not come with clean hands to get an equitable relief before this Court.

9. Under such circumstances, I do not find any reason to interfere with the order passed by the Secretary of the West Bengal Board of Madrasah Education. Accordingly, the writ petition stands dismissed. There will be no order as to costs.

Let urgent xerox certified copy of this order, if applied for, be given to the learned

counsel for the parties within a period of fortnight from the date of putting the requisites.