

(2018) 07 CAL CK 0124
In the Calcutta High Court
Case No : AST 50 of 2018

Arun Prakash Ghosh

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 18-07-2018

Acts Referred:

Management of Recognised Non-Government Institution (Aided and Unaided), Rules, 1969 — Section 28(8)
Constitution of India, 1950 — Article 226

Citation : (2018) 07 CAL CK 0124

Hon'ble Judges : SHEKHAR B. SARAF, J

Bench : Single Bench

Advocate : Ekramul Bari, Syed Mansur Ali, Tanuja Basak, Anusuya Banerjee, Himadri Kumar Bandopadhyay, Chaitali Bhattacharyya, Mrinal Kanti Ghosh

Judgement

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an order passed by the President,

West Bengal Board of Secondary Education dated July 3, 2018.

2. By this order the President has passed an order approving the proposal for disciplinary proceedings (second stage) against the writ petitioner and

the quantum of punishment being compulsory retirement from service. In the said order the President has also requested the School authority to lodge

a FIR at the local Police Station for further investigation under proper sanction of law.

3. Mr. Bari appearing on behalf of the writ petitioner submits that the order per se is null and void as it has been passed by the President of the Adhoc

Committee. He relied on Rule 28(8) of the Rules for Management of Recognised Non-Government Institution (Aided and Unaided), Rules, 1969

(hereinafter referred as the "said Rules") as modified on January 8, 2010 to

submit that the power of the Board to grant prior approval has to be exercised by the Board itself and not by the President of the Board. He submitted that the second stage approval has to be granted by the Board, and in the present case, the Adhoc Committee that has been given the power of the Board by the West Bengal Board of Secondary Education (Amended) Bill, 2016. He further submits that in the present case the enquiry report which has been relied upon by the President was never served upon the petitioner and non-supply of the enquiry report tantamounts to violation of the principles of natural justice that are required to be adhered to in disciplinary proceedings. To buttress his argument he relied on a Division Bench judgement of this Court in Sujit Das vs. West Bengal Board of Secondary Education & Ors. reported in 1997 (2) CLJ wherein Rule 28 Clause 8 of the said Rules was considered. The relevant portions of the said judgement is delineated below :

30. A disciplinary proceedings as against a delinquent can be subdivided into 3 parts in terms of Rule 28(8) of the said Rules. The said Rule provides for drawing up of a formal proceeding and issuance of charge sheet to the teacher and offering him reasonable facilities for defending himself. The word "formal proceeding" evidently means a proceeding initiated for the purpose of enquiring into the charges against the delinquent employee. In the said proceeding, the delinquent must be offered reasonable facilities for defending himself which, without any shadow of doubt, means that the principles of natural justice have to be complied with. The Rule of audi alteram partem roots in fairness. It entitles the delinquent to have a fair hearing. Charges when drawn up as against a delinquent are required to be proved in a proceedings after offering him reasonable facilities for defending himself. The word "facilities" imports procedural fairness.

31. Unless the delinquent is provided with the facilities to have inspection and/or take copy of the documents upon which the Committee/Administrator relies upon, he cannot file a show cause, nor can the same satisfy the requirements of giving all opportunities to the delinquent Officer to defend himself.

32. Unless an effective show-cause is filed, the question of consideration thereof by the disciplinary authority at the first instance and Section 24

Committee at the second instance for the purpose of grant of approval would not arise.

33. Moreover, the principles of natural justice in relation to a domestic enquiry must be held to comprise of two basic elements, i.e. the right to cross-

examine the witness examined by the Managing Committee or the Administrator and right to examine witnesses in his favour. He at least is entitled to

examine himself and make submissions as regards his defences. Unless, in my considered opinion, the Committee takes recourse to the said

formalities, it cannot be said to have offered reasonable facilities for defending to a delinquent.â??

4. Per contra, counsel on behalf of the Board submitted that the President has the right to exercise the power of the Board as per West Bengal Board

of Secondary Education Amendment Bill, 2016. He relied on the amendment wherein Section 4A has been inserted. He relied on sub Section 2 of

Section 4A to show that the President of the Adhoc Committee has the power to act as the Board.

5. He further submitted that the hearing was granted to the petitioner and he was present in the same and accordingly, there has been no violation of

the principles of natural justice.

6. I have considered the submissions made by counsels on behalf of the parties and also perused the materials on record.

7. On careful reading of the provisions of the said Rules, it is clear that the Board/ Adhoc Committee is the appropriate authority to grant approval of

the second stage disciplinary proceedings. In the present case, a prima facie reading of the impugned order and the communication of the said

impugned order makes it very clear that the order was passed solely by the President. In fact, in the order, the President uses the word â??Iâ??

while coming to his conclusion.

8. From a bare perusal of the order, it is clear that none of the Board members were present during the hearing and this power was exercised by the

President alone. Nothing has been shown before this Court to controvert the position described above. Secondly, the allegation of the writ petitioner

that the enquiry report was not furnished to him have not been controverted by the respondent Board.

9. I am of the opinion that without the enquiry report, the writ petitioner would

not have been in a position to make fair submissions before the Board.

The Division Bench judgement relied upon by the petitioner is pat on the point and the principle that emerges is â??non-supplying the enquiry report

tantamounts to violation of the principles of natural justiceâ??.

10. It is to be noted that the present order that has been passed is not an order passed in an emergency situation as per Clause 28, sub clause 2. One

may refer to the coordinate Bench Judgement in Managing Committee, Chetla Boys High School & Ors. vs. West Bengal Board of Secondary

Education & Ors. reported in (2002) 1 CAL LT 330 wherein it has been held that it is a settled legal position that emergency power cannot be

exercised unless there is an emergent situation. In the present case, there is clearly no whisper of any emergency situation at all.

11. As discussed above, the impugned order is itself vitiated by the fact that the decision was not taken by the Board and only by the President.

Accordingly, I stay the operation of the order dated June 28, 2018 for a period of two months or until further orders, whichever is earlier.

12. Affidavit in opposition may be filed by the respondent authorities within a period of four weeks, reply, if any, to be filed within two weeks

thereafter. Liberty is granted to the parties to mention the matter upon completion of affidavits.

13. All parties to act on the website copy of this order.