

(1995) 02 CAL CK 0021
In the Calcutta High Court
Case No : C.O. No. 15580 (W) of 1991

Badal Kumar Sahu and others		APPELLANT
	Vs	
West Bengal Board of Secondary Education and others		RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227
West Bengal Secondary Education Act, 1950 — Section 10

Citation : AIR 1996 Cal 7

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Advocate : Sadesh Bhusna Bhunia and Ashok Kumar maity, for the Appellant;
A.N. Ghosa and S.S. Manna, P.K. Chatterjee, S. Chandra, for the Respondent

Judgement

1. Both these writ applications involving common question of fact and law were taken up for hearing together and in the facts and circumstances are being disposed by this common judgment.
2. The petitioner in C.O. No. 8814(W) of 1990 is directed against an order dated 22-5-1990 passed by West Bengal Board of Secondary Education and in C.O. No. 15580 (W) of 1991, the petition is directed against an order dated 10-10-1991.
3. The fact of the matter lies in a very narrow compass.
4. The petitioners of C.O. No. 8814(W) of 1990 are said to be the members of the Managing Committee of Amarshi B.C. Girls' High Court (hereinafter referred to as "the said School"). The election in the guardians category for the purpose of reconstitution of the Managing Committee was held in the year 1981. The Managing Committee of the School was reconstituted on 7-7-1988. The Headmistress of the School filed an appeal, before the appeal committee questioning the said election, the matter went up to the appeal committee on an appeal filed No. (sic) questioning an order of suspension, wherein the Rule being appeal number 40/89. In the said appeal, it was inter alia, held that the

petitioners were wrongly elected in guardians" category as they were not entitled to contest the election as at the relevant time their wards were not studying in the school. The appeal committee, therefore, held that the Constitution of the Managing Committee was invalid in law.

5. The petitioners filed the aforementioned application being C.O. No. 8814 of 1990 challenging the legality and validity of the aforementioned order dated 19-4-1990. By an interim order dated 12-6-1990 passed by this Court the Headmistress was restrained from joining the school. However, by an another interim order it was directed that the Headmistress and other staff of the school should receive the arrears salary and allowances since June, 1988. By an order dated 8-4-1991 the Headmistress was permitted to join the said school and it was further directed that she should be paid all her pay and other admissible allowances from the date of" her suspension and the matter was remanded before the Appeal Committee for rehearing.

6. The Appeal Committee heard the matter again pursuant to the aforementioned direction of this Court and by an order dated 3-10-1991 the Appeal Committee again reiterated its earlier view. The aforementioned order dated 3-10-1991 has again been questioned by the petitioners and by order dated 24-2-1991 a learned single Judge of this Court passed an interim order restraining West Bengal Board of Secondary Education and others from appointing any Administrator and/or Ad hoc Committee. An order of status quo was also passed as regards functioning of the writ petitioners as members of the Managing Committee of the said School until further orders.

7. The said Revisional Application being C.O. No.4148 of 1991 as heard by a learned single Judge of this Court and by an order dated 7-5-1993 the said application was dismissed and all interim orders were vacated.

8. In this case the Assistant Inspector of Schools (SE), Midnapore, submitted a report on 10-10-1991 pursuant to the direction of the District Inspector of Schools (SE), Midnapore wherein it was, inter alia, stated that despite the fact that the Head-mistress had joined the said school, but teacher-in-charge allegedly had taken steps for getting the election held. It was stated that the teacher-in-charge being not the Headmistress has no locus standi to take such steps. The District Inspector of Schools directed the Managing Committee of the said school not to hold election in the guardians" category. The petitioners in paragraphs 10 and 11 of the writ application state thus:--

"10. That on 9-5-1988 F.M.A.T. No. 1129 of 1987 was disposed of by Hon"ble Mrs. Justice Padma Khastagir and Hon"ble Mr. Justice A. C. Sengupta directing the District Inspector of Schools (SE), Midnapore to place the Departmental Nominee and complete reconstitution of the Managing Committee within a fortnight.

11. That on 8-7-1988 the Managing Committee was reconstituted as per the aforesaid order dated 9-5-1988 and the newly elected members of the Managing

Committee held office bearers" election. Accordingly in terms of Rule 26 of the Procedural Rules of election read with Rule 12 the Managing Committee is entitled to function till 8-7-1991."

9. According to the petitioners after placement of the departmental nominee the Managing Committee started functioning w.e.f. 8-7-1988 and an election of teachers" representative category was held in the year 1991. It is stated that the Headmistress of the said school obtained an order from this Court on 21-2-1992. directing stoppage of election in guardian"s category and as such election in guardians" category had not been held. Thereafter on 24-12-1991 an order of status quo was passed by Kalyanmoy Ganguly, J. An application for vacating the interim order was filed with a prayer to appoint an administrator in the said school.

10. It further appears that Susanta Chat-terjee, J. by an order dated 25-6-1990 appointed Smt. Giti Das as a special officer of the school for acting as Drawing and Disbursing Officer in respect of the School. The contention of the petitioners is that the said special officer refused to act as Drawing and Disbursing Officer.

11. It was further submitted that the West Bengal Board of Secondary Education by a General Circular dated 8th June, 1994 extended the tenure of the Managing Committee till 31-12-1994 and thus the school was to be under the Management of Managing Committee of which the petitioners are members. It has been submitted that in this situation the Board appointed administrator without hearing the Managing Committee of the school purporting to exercise its emergency power.

12. Mr. Sadesh Bhusan Bhunia, submitted that keeping in view of the aforementioned facts and circumstances, the Managing Committee of the school may be permitted to function so as to enable it to complete the election in the guardians" category. It was submitted that the observations of the Appeal Committee is not binding upon the Managing Committee. It has further been submitted that similarly the judgment of Tarun Chatterjee, J. dated 7th May, 1993 passed in C.O. No. 4148 of 1991 cannot have any effect in this writ application. The learned Counsel, therefore, submitted that the Board cannot now be permitted to appoint an administrator.

13. The Special Officer has submitted a report. In her report it has, inter alia, been contended that from March, 1994 to September, 1994 she had not been paid her salary. It has been stated that the District Inspector of Schools has committed a contempt of this Court inasmuch as he has violated the order dated 18-6-1991 passed by Susanta Chatterjee, J. The Special Officer contended that she came to learn about the factum of joining of the Headmistress by her letter dated 1-7-1991 when the school was closed for summer vacation. According to the special officer the Headmistress has not been signing the Attendance Register recording resumption of her duty despite requests made to her by the Secretary of the School in terms of his letter being Memo No. Secy. 136(0/93

dated 13-5-1993.

14. It is stated that a cheque for a sum of Rs. 1,82,681.95 P. dated 12-2-1994 has been issued by D.D.O. in favour of the Headmistress of the school on the basis of the pay statement of arrear salary of the Headmistress for the period of June, 1988 to May, 1993 issued by the Secretary of the said school and which has been accepted by the Headmistress of the said school on 12-9-1994 in presence of the learned Advocate Mr. Alok Nath Ghosh.

15. In this case, it appears that an application being C.O. No. 8814 of 1990 has been filed for removal of Drawing and Disbursing Officer/Special Officer Smt. Giti Das by the Headmistress of the said school. It further appears that the Headmistress of the school was granted leave to file a separate writ application by a Division Bench of this Court pursuant whereof a writ petition being C.O. No. 38(W) of 1989 was filed. N. K. Mitra, J. by an order dated 7-7-1989 held that in view of the stay of suspension order, the writ petition has become infructuous but it was observed that reconstitution of the Managing Committee can be challenged before the Appeal Committee and incidentally the Appeal Committee can also go into the question of validity and legality of the reconstitution thereof. The Headmistress was also allowed to join the institution in view of the stay of the order of suspension passed in her favour. The Managing Committee was also directed to pay her the subsistence allowances till the order of stay whereafter she would be entitled to get the full salary. It appears that thereafter the Managing Committee again adopted a resolution on 2-11-1989 in terms whereof the Headmistress was placed under suspension. On 3-11-1989 an appeal again was filed against the said order on 27-12-1989 questioning both the orders of suspension as also the validity of the reconstitution of the Managing Committee. As indicated hereinbefore, by an order dated 19-4-1990 the Appeal Committee, inter alia held that the reconstitution of the Managing Committee was illegal. In the writ petition an order dated 8-4-1991 was passed by Mahitosh Majumdar, J. in CO. No. 8814 (W) of 1990. The Headmistress preferred an appeal being F.M.A.T. No. 2039 of 1991 against the said order and by an order dated 8-4-1991 the Appeal Committee's order was affirmed.

16. It is not in dispute that the Appeal Committee after giving an opportunity of being heard to all the parties by an order dated 3-10-1991 allowed the appeal preferred by the Headmistress.

17. It appears that an application under Article 227 of the Constitution of India was v moved against the said order of the Appeal Committee dated 3-10-1991 wherein an interim order of stay was passed till 15th January, 1992.

18. An application for rectification of the said order was filed allegedly without serving a copy of the said application upon the opposite party No. 2 and the interim order staying the operation of the order of the Appeal Committee was extended till the disposal of the application.

19. The other writ application being C.O. No. 15580(W) of 1991 was moved after

obtaining the stay in C.O. No. 4148 of 1991.

20. In the said writ petition the Headmistress was not a party and an application was filed for addition of party by her.

21. So far as the contempt application is concerned, it appears that by an order dated 25-6-1990 Susanta Chatterjee, J. passed an interim order that the Headmistress should be allowed to join her duties without the leave of the Court and appointed District Inspector of Schools (SE), Midnappore as D.D.O. and the said D.D.O. was directed to pay the arrears salary and allowances of the Headmistress since June, 1988, The D.D.O. paid a sum of Rs.40,000/- on an ad hoc basis of the Headmistress. The contempt application was filed by the writ petitioner No. 11 and others. against the District Inspector of Schools (SE), Midnapore alleging non-payment of salaries by the Drawing and Disbursing Officer to the teaching and non-teaching staff. The said District Inspector of Schools (SE) appointed as Special Officer by this Court expressed his inability to function as Drawing and Disbursing Officer in view of his responsibilities in respect of 1700 schools, which was accepted by this Court and in his place Smt. Giti Das was appointed as Drawing and Disbursing Officer.

22. Admittedly no rules in the contempt matter has been issued.

23. From the facts as stated hereinbefore there cannot be any doubt whatsoever that the Appeal Committee had arrived a finding of fact that the constitution of the Managing Committee was illegal.

24. In C.O. No. 4148 of 1991, in a contention was raised that the Appeal Committee erred in holding that the election of the writ petitioners as guardians" representative in the Managing Committee was illegal. Tarun Chatterjee, J. in terms of this judgment dated 7th May 1993, inter alia, held that the appeal was maintainable under Regulation 3 of the Appeal Regulation at the instance of Smt. Dipti Dutta, the Headmistress.

25. The learned Judge further, inter alia, held that four guardian members of the Managing Committee had left the Institution after they were elected from the guardians" category in the year 1986 and therefore reconstitution of the Managing Committee in the year 1988 was not at all permissible and thus the said reconstitution was bad in law under Rule 6 of the Management Rule.

26. The learned Judge further held:--

"From a plain reading of Rule 27 of the Procedure Rule in respect of co-option in relation to a member of the Committee nobody becomes the member of the Committee until the reconstitution is validly made and until anybody becomes the member of the Committee, question of casual vacancy and co-option in place and said casual vacancy does not and cannot arise at all. The casual vacancy will arise after reconstitution of the Committee. In the present case there was no casual vacancy as before the alleged reconstitution that was made on 8th day of July, 1988 the four members by then has ceased to be the members of the

Managing Committee."

27. Keeping in view of the aforementioned decision of the Appeal Committee as also the decision of this Court, there cannot be any doubt that the petitioners in these writ applications cannot urge the same question over again in this writ application, if the reconstitution of the Managing Committee in the year 1988 itself was illegal and void ab initio, they cannot get any benefit of the the purported general order of extension passed by the West Bengal Board of Secondary Education. The general extension order which was passed by the West Bengal Board of Secondary Education presupposes a valid constitution of the Managing Committee. The Managing Committee being invalid from its inception had no legal right to function and as such it is non est in the eye of law, and its reconstitution is a nullity.

28. Mr. Bhunia may be correct in his submission that the District Inspector of Schools (SE) had no jurisdiction to pass the impugned order which is contained in Annexure "N" to the Writ application. But in view of the order proposed to be passed it is not necessary to consider this aspect of the matter. This Court passed an interim order purported to be on the basis of the order of stay dated 13-12-1991 in C.O. No. 4148 of 1991. In view of the judgment passed by Tarun Chatterjee, J. it must be held that the writ applications are barred under the principles of res judicata and the petitioners are bound thereby.

29. Moreover, in terms of Rule 12 of the Managing Rule the life of the Managing Committee is three years. Even if it be assumed that the Managing Committee was constituted on 8-7-1988, its tenure has expired on 7-7-1991 and in that view of the matter too, the Managing Committee could not have functioned thereafter.

30. It appears that in paragraph 45, the petitioners submitted that the tenure of the Managing Committee was extended by the Board only up to 31st December, 1991.

31. For the reasons aforementioned, I am of the view that no relief can be granted to the writ petitioners.

32. It may be noticed that at the hearing of these writ applications the learned Counsel appearing on behalf of Smt. Dipti Dutta, Headmistress was heard and Mr. Bhunia was also permitted to reply to the said argument the application filed by Smt. Dipti Dutta for impleading her as a party is, therefore, allowed.

33. So far as the contempt matter is concerned, keeping in view of the fact that the writ application is being dismissed and further in view of the fact that the District Inspector of Schools (SE) was released by this Court from acting as Drawing and Disbursing Officer, no further action is required to be taken in the matter.

34. Reference in this connection may be made to State of West Bengal v. Ananda Gopal Chakraborty reported in 92 C.W.N. 1184 wherein the Division Bench of this

Court held :--

"After considering the respective contentions made by the learned Counsel for the parties, it appears to us that the order made in writ petition relating to C.O. No. 1245 (W) of 1986 having been expressly set aside in the appeal preferred against the judgment passed in C.O. No. 12745 (W) of 1986, there was really no occasion for the learned trial Judge to proceed further in the contempt application for the alleged violation of the order passed by the learned trial Judge. In disposing of the said contempt application, the learned trial Judge has rightly held that there was no need for him to go into the question of alleged contempt of this Court. Having come to such finding, in our view, the learned trial Judge should have straightway disposed of the application for contempt without passing any other order and there was no further occasion for him to deal with the said application for passing further order and or directions as contained in the impugned order. In our view, there is enough force in the contentions of Mr. Saktinath Mukherjee, learned Counsel for the Dist. School Board. Even if we assume that the learned trial Judge had assumed the jurisdiction under Art. 226 of the Constitution in passing the directions as contained in the impugned order, such directions should not have been passed in a miscellaneous petition when such miscellaneous petition was made in the writ proceeding finally disposed of. We may also indicate here that in the instant case, even a miscellaneous petition, was not presented but a contempt application was made and as aforesaid, such contempt application was disposed of without going into the question of alleged violation of the order of this Court in view of the fact that the order passed in the writ proceeding has been expressly set aside by the Court of Appeal. In the aforesaid circumstances, we do not think that there was any justification in passing the directions as contained in the impugned order."

35. So far as the application filed for discharge of the special officer is concerned, from the report submitted by the special officer herself it appears that she had not been functioning properly as Drawing and Disbursing Officer. It is a matter of regret that although admittedly she had come to learn that the Headmistress had assumed her duties from her letter dated 1-7-1991 and Headmistress had already been paid Rupees 40,354.10 P. by District Inspector of Schools before the appointment of special officer as D.D.O., she had been merely paid salary of Rs. 5,000/- on an ad hoc basis and further a sum of Rs. 5,745.18 P. by way of subsistence allowance.

36. It further appears from the letter dated 18-11-1991 issued by the Headmistress that one Kalpana Das and Smt. Purnima Bera two Assistant Teachers and one Sri Paresh Sukai, the clerk were allowed to mark attendance in a separate register which was inspected by the Assistant Inspector of Schools on 9-10-1991. The Special Officer in her report stated as she was ordered to pay, only on the basis of regular attendance register maintained by the school authority, no payment could be made to the Headmistress as also the

aforementioned teaching and non-teaching staff as allegedly their names never appeared in the pay statement or Acquittance Roll Register issued by the then teacher-in-charge. As indicated hereinbefore, the teacher-in-charge could not have functioned after the Headmistress joined the school. This basic question should have occurred to the special officer. If the Special Officer was not in a position to take any decision by herself she should have applied before this Court for proper directions. Even assuming that her stand was correct, it does not stand to any reason as to why she had issued the letter dated 29-8-1994 to the Headmistress asking her to come and accept the cheque upon putting her signature in the Acquittance Register. Admittedly the Headmistress received a sum of Rs. 1,82,681,95 P. by a cheque dated 12-9-1994 i.e. after the judgment was reserved.

37. It was not expected of a special officer to act in such a manner.

38. For the reasons aforementioned, in my opinion, sufficient cause has been made out for discharge of the special officer.

39. Keeping in view of the peculiar facts and circumstances of the case, these matters are disposed of with the following directions :--

1. District Inspector of Schools (SE), Midnapore should take over the functions of the school forthwith pending appointment of an Administrator and/or Ad hoc Committee by the West Bengal Board of Secondary Education.

2. West Bengal Board of Secondary Education is directed to appoint an Administrator or an Ad hoc Committee initially for a period of 4 months who shall take over the charge of the management of the School from the District Inspector of Schools (SE), Midnapore.

3. The administrator and/or ad hoc committee appointed by the W.B.B.S.E. shall cause an election to be held upon revising the voters' list with the assistance of the Headmistress of the Institution at an early date and not later than 4 months from the date of assumption of charge of the Headmistress of the school.

4. The District Inspector of Schools (SE), keeping in view of the peculiar facts and circumstances of this case would render all help and co-operation in the matter of reconstitution of the Managing Committee. The Headmistress shall also render all co-operation to the said administrator and/or Ad hoc Committee.

5. The Administrator and/or Ad hoc Committee may not take any policy decision nor shall it make any appointment; nor take any disciplinary proceedings against any employee of the school.

6. The Administrator, and/or Ad hoc Committee shall also pay all lawful dues of the teaching and non-teaching staff at an early date and preferably within a period of six weeks from the date of taking over of charge of the school.

7. The Headmistress and/or District Inspector of Schools (SE) shall also render their full co-operation in the said matter. The Administrator and/or Ad hoc

Committee shall upon reconstitution forthwith hand over charge to the reconstituted Managing Committee.

8. The District Inspector of Schools (SE), Midnapore shall pay the arrear salary to the special officer appointed by the Court, if there be any.

40. However, in the facts and circumstances of this case, the parties shall pay and bear their own costs.

41. Order accordingly.