

(1993) 06 CAL CK 0043

In the Calcutta High Court

Case No : Appeal from Original Order No. 1130 of 1992

Bimal Krishna Acharya and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 09-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 2 CALLT 445

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Asok Kumar Chakravarty, J

Bench : Division Bench

Advocate : S.C. Bose, J. Islam and Amarendra Nath Roy, for the Appellant;A.P. Sarkar, D.S. Ganguly, Mihir Kumar Das and Harasit Chakravarty, for the Respondent

Judgement

Bhagabati Prasad Banerjee, J.—This is an appeal against the judgment and decree passed by the learned Trial Judge on- 7th November, 1986 in C.O. No. 13247 (W) of 1986 holding that the Writ Court was not a proper forum for the purpose of adjudication of grievances of the writ petitioner and accordingly the writ petition was dismissed. As a result of the said order passed by the learned Trial Judge the resolution of the Executive Council of the Rabindra Bharati University adopted in its meeting on 9th September, 1986 was upheld. By the said resolution the Council considered the affairs of "Kabitirtha", an Institution affiliated to the said University in the light of the judgment and order passed on 11th July, 1986 by the learned Assistant District Judge, Alipore, in Title Suit No. 82 of 1985 and the Council found that the two Institutions under the same name and style of "Kabitirtha" College are being run-one at Subhas Bally and the other at Bakshipalli, Bangaon by two separate groups of persons and that the Governing Body was alleged to have been reconstituted by the same Institution on 18.10. 1984 for the Institution at Subhas pally and in January, 1984 for the Institution at Bakshipally were not properly re-constituted as per the act and statute of the said University. Further the claim of Pinaki Ranjan Bharati, the founder President of Kabitirtha College having the right of management of the

said college failed. The fact of this case is that in or about 1976 "Kabirtha", a college of Fine Arts, Dance, Drama and Music was started at Subhas Pally, Bongaon and was duly affiliated under Rabindra University on 26th August, 1976. Sri Pinaki Ranjan Bharati was the Principal. The said college was situated at a house belonging to father of Sri Pinaki Ranjan Bharati. There were about 500 students in the said college and the staff-both teaching and non-teaching were 50 in number. On 1.9.84-Dissension arose with Sri Pinaki Ranjan Bharati and the member of the Governing Body. On 2.8.84 Kshirod Chandra Bharati, the landlord and the father of Sri Pinaki Ranjan Bharati served a notice to quit the rented premises where the college was situated alleging reasonable requirement for his own use and occupation. The Governing Body in their general meeting held on 23.9.84 resolved that the college be shifted to a new college premises on and from 1.10.84. In the said meeting the resolution was also taken for asking the Principal Sri Pinaki Ranjan Bharati to give an explanation for his unauthorised withdrawal of money and misappropriation of the same and to submit accounts of income and expenditure upto date. The matter was brought to the notice of the Rabindra Bharati University on January 31, 1985. The Registrar of the said University made a communication to both Sri Pinaki Ranjan Bharati, C/O "Kabitirtha", Bongaon as also Siddheswar Biswas, C/O "Kabitirtha", Bongaon intimating that: the affiliation granted by Rabindra Bharati University to the institution under the name and style of "Kabitirtha" kept in abeyance from now on until properly construed authority is able to present before the University by an amicably signed consensus or strength of order passed by the competent court. On 9th April, 1985 the Registrar of the Rabindra Bharati University assured that the University will provide all necessary reliefs to such persons having legal entity. A Police Case No. 831 of 1984 was started against Sri Pinaki Ranjan Bharati and his father, Kshirod Chandra Bharati in the Court of Sub-divisional Judicial Magistrate, Bongaon, North 24-Parganas as for defalcation of college fund amounting to Rs. 34,000/-. On 9.12.84 the Governing Body passed a resolution and suspended Sri Pinaki Ranjan Bharati till the disposal of the said criminal case and Vice Principal of the College was given charge as acting principal. On 6th February, 1985 Title Suit No. 32 of 1985 was filed by Sri Pinaki Ranjan Bharati and 5 others against Siddheswar Biswas and 7 others in the Court of the Subordinate Judge, Alipore, inter alia, praying for:--

(a) For a declaration that the college "Kabitirtha" run by the plaintiffs is the college affiliated with the Rabindra Bharati University and plaintiffs are entitled to run the said college.

(b) For a declaration that the defendants have no right and/or they have no authority to represent the said college or to its assets or to run any college under the name and style of "Kabitirtha."

(c) For a decree for permanent injunction restraining any institution under the same name and style of "Kabitirtha."

(d) For costs.

(e) For such other relief or reliefs to which the plaintiffs are entitled in law and equity.

(f) For a declaration that the meeting held in January, 1984 is void and the alleged governing body formed by the defendants by virtue of the meeting alleged to be held in January, 1984 is not a legally constituted governing body as such the purported governing body has no right to represent the college "Kabitirtha."

3. By judgment and order dated 11.6.86 the Title Suit was dismissed by the learned Assistant District Judge held inter alia :--

The cumulative result of the above discussion is that the plaintiffs failed to prove that they formed any governing body properly on 18.10.84 that any such committees of the plaintiffs worked for the college. On the other hand, the defendants had been able to prove that the college was actually shifted from Subhas Pally to Bakshi Pally.

After shifting the college to Bakshi Pally, students appeared at the Years Final Diploma Course Examination from time to time. In 1984 one of the students from the said Institution stood second in Music and in the Diploma Course held in 1985 one student got 3rd place in the Music.

4. On 16.7.1986 Siddheswar Biswas, the Secretary of the Governing Body intimated about the result of T.S. No. 32 of 1985 and solicited permission to take steps for admission of students in the college at Bakshi Pally. On 10.9.86 the Executive Council of the Rabindra Bharati University passed an order of disaffiliation of the "Kabitirtha" without giving any opportunity to the appellants. The said order of disaffiliation was notified to the appellants by the Registrar of the Rabindra Bharati University. On 7.11.86 the writ petition filed on behalf of the appellants against the order of this disaffiliation was dismissed by the Hon'ble Mr. Justice U. C. Banerjee stating, inter alia, that the Writ Court is not the proper forum for the purpose of adjudication of the grievances of the writ petitioner. Liberty was given to the petitioner to move the proper forum for appropriate redress, if any, available under the law.

5. On 6th January, 1987 the appeal was preferred against the judgment and order dated 7.11.86 passed by the learned Single Judge, being F.M.A.T. No. 3515 of 1986. An application for stay was moved and on hearing, Manash Nath Ray, J (as his Lordship then was) and S.K. Mukherjee, J. on 6.1.87 were pleased inter alia.

"As such, we dispose of the application by directing that till the disposal of the appeal or until further orders, there will be stay of the order as made by the learned Trial Judge. Consequent to the above we also keep it on record that the order of disaffiliation, as passed by the Rabindra Bharati University on 10th September, 1986 is stayed."

6. On 8th January 1987 the appeal Court presided over by the Hon'ble Mr.

Justice M. N. Roy (as His Lordship then was) pleased to direct that in view of the pending dispute between the parties to the application new students should not be admitted. On 17th December, 1987 the Title Appeal being No. 138 of 1986 was partly allowed by the 12th Additional Court of the District Judge. Against the same a second appeal was preferred being No. S.A. 520/88. Pinaki Ranjan Bharati and 5 others filed an application in the Appeal Court for addition of parties and further reliefs. On 28.6.88 M.N. Roy (as His Lordship then was) and D.K. Basu J. were pleased, inter alia, to add Pinaki Ranjan Bharati and ors. as respondents by passing, the following orders:--

"Mr. Islam produced a judgment dated 26.11.87 passed by another Division Bench and in view of the earlier order such application cannot be entertained. Such submissions were of course disputed by Mr. Chakraborty. However, at the stage, we are not considering on merits and as such, we direct that let the applicant be added as respondent subject to such objection that will be taken at the hearing."

7. On 5th July, 1990 the Division Bench of this Hon"ble Court consisting of the Hon"ble Mr. Justice Shamsuddin Ahmed and the Hon"ble Justice Abani Mohan Sinha (as Their Lordships then were) were pleased inter alia, to allow the Second Appeal No. 520 of 1988. The judgment and decree of the learned Trial Court were affirmed and restored. Their Lordships were pleased to hold inter alia, as follows :--

"The Rabindra Bharati Act, 1963 in its paragraph 50 indicate how affiliation is granted by the Executive Council of the University. It also indicates that it has the power to suspend or withdraw the affiliation, if it is satisfied that any of the condition, imposed in paragraph 50(1) of the Statute are not observed. But before the cancellation of affiliation of any Institution, the management of the Institution shall be given opportunity of making representation before the Council. Since no such steps having admittedly been taken by Rabindra Bharati University, it may be presumed that the affiliation has been continuing so far as the college "Kabitirtha" is concerned."

8. On 29.1.92 a SLP was filed by Sri Pinaki Ranjan Bharati and others against the said judgment and decree dated 5th July, 1990 of the High Court at Calcutta in S.A. No. 520/88 was dismissed after hearing both the parties. The subsequent events have been brought to the notice of the Court by filing a supplementary affidavit on 15th December, 1992 which is on record.

9. Mr. Soumendra Chandra Bose, learned Counsel appearing on behalf of the appellants submitted that in view of the aforesaid facts and in view of the finding of the Division Bench of this Hon"ble Court and in view of the aforesaid facts in which the Rabindra Bharati University themselves acknowledge that the order keeping disaffiliation in abeyance will be withdrawn after if the appellants get a favourable order from a competent Court and further in view of the finding of the Division Bench of this Hon"ble Court in S.A. No. 520 of 1988 that the appropriate

order of disaffiliation was not lawful and that it may be presumed that the affiliation has been continued so far as the college "Kabitirtha" is concerned. It is further submitted that this Court should direct the Rabindra Bharati University to rescind the order of disaffiliation by sending a nominee as also by taking that "Kabitirtha" situated at Bakshi pally is the proper college with its duly governing body. It was submitted that Sri Pinaki Ranjan Bharati did not move to this Hon"ble Court against the order dated 30th January, 1985 by which the Registrar of the Rabindra Bharati University kept the affiliation of the college in abeyance.

Pinaki Ranjan Bharati and others, the respondents herein did not also make any grievance before this Hon"ble Court against the order of disaffiliation which was taken up by the only appellants before this Hon"ble Court. As such the added parties viz. Pinaki Ranjan Bharati cannot have any further say in this matter particularly in view of the Hon"ble Division Benches" judgment of this Court passed in S.A. No. 520 of 1988 and as well as the SLP filed by him to the Hon"ble Supreme Court of India being dismissed.

It is further submitted that the learned Trial Judge should have allowed the writ application, inter alia, on the ground :

(a) That no opportunity was afforded to the appellants herein before passing any order of disaffiliation.

(b) Even if the dispute was to be resolved by the Civil Court, in view of the judgment and decree passed by this Hon"ble Court in S.A. No. 520 of 1988, had finally decided the matter in favour of the appellants in holding that the order of disaffiliation was not lawful and further dismissing the claim of the added respondents in the title Suit for declaration that the college "Kabitirtha" run by the plaintiffs is the college affiliated by the Rabindra Bharati University and other relief claimed in the suit.

10. It was submitted by Mr. Arun Prokash Sircar, learned Advocate appearing on behalf of Rabindra Bharati University that towards the end of 1984 strained relationship developed amongst the members of the Governing Body, teaching and new teaching staff that led to a division and brought about two distinct warring factions in the administration of the college.

11. Both Sri Pinaki Ranjan Bharati and Sri Siddheswar Biswas, belonging to different factions, brought the matter of their respective differences to the notice of the Rabindra Bharati University making claims and counterclaims as to the right and control over the said College whereupon the Registrar, Rabindra Bharati University by his letter No. 89.30 E.B. (2) dated 4.2.1985 addressed to the said two persons made it clear that since management and/or administration of the authority of the said Institution was in dispute and hence in the fitness of things the affiliation granted by the Rabindra Bharati University was kept in abeyance from the said date of 4.2.85 and until the matter could be amicably settled between the warring factions or an order passed by a competent court of law in which the matter was pending at the relevant time. It was further submitted that

in view of the judgment and order passed by the learned Trial Judge, Alipore, passed on 11th July, 1988 Rabindra Bharati University passed a resolution in its meeting held on 10th July, 1986 which was, inter alia, as follows :--

(i) That in view of non-existence of Kabitirtha college at Subhas Pally, Bongaon which was affiliated to the University be and is hereby disaffiliated with immediate effect. A notification in two leading dailies, one in English and one in Bengali be given to this effect ;

(ii) That the Institution run at Bakshi Pally, Bongaon is neither an affiliated institution nor a recognised institution, no approval of the Council to the alleged Governing Body of a self-styled Institution be accorded;

(iii) That in the larger interest of the students already admitted by the two institutions at Subhash Pally and Bakshi Pally upto the date of admission allowed by the University vide the Registrar's letter dated 21.1.85/4.2.85 as they may be eligible to appear in the respective examinations of the University according to rules, be and are hereby allowed to appear at such examinations.

12. It was submitted by Mr. Arun Prokash Sircar, learned Advocate, appearing on behalf of the University that affiliation to any college or institution is granted by the Rabindra Bharati University u/s 4(3) of the Rabindra Bharati Act, 1981 read with its statute 104 and 105 of Rabindra Bharati First Statutes (Supplement) 1982 on an application made to the University by such college or institution. In terms of statute 104 the Executive Council of the University is the authority to grant affiliation or recognition to a college or institution in accordance with the provisions of the statutes and subject to such conditions as may be prescribed from time to time.

13. The conditions of affiliation have been laid down under Clause (2) of Statute 105 providing inter alia, that the college or institution applying for affiliation shall satisfy the Executive Council as to the constitution of the governing body, space and building Library and leading staff such conditions are not only required to be fulfilled for the purpose of obtaining affiliation, but they have to be observed during the period of affiliation failing which the Executive Council shall have the power to suspend or withdraw the affiliation. It was further submitted that "Kabitirtha" situated at Subhas Pally, Bongaon, 24-Parganas (North) is the institution that was granted affiliation by the Rabindra Bharati University in 1976, and it functioned upto 1984. As there was no existence of the Institution at Subhas Pally Bongaon, the Executive Council decided to disaffiliate it by its resolution dated 10th September, 1986.

14. This decision of the Executive Council to disaffiliate the institution was warranted under the provisions of First statutes 104 and 105 in as much as the concerned institution failed to maintain the conditions of affiliation. It was further submitted that a part from the fact that the concerned institution "Kabitirtha" at Subhaspally, Bangaon, District 24-Parganas ceased to function in 1984 there was hardly any existence of the institution in terms of its physical situation and

management." It has been judicially noticed as would appear from the judgment and the order dated 5th July, 1990 of the Hon"ble Division Bench consisting of the Hon"ble Abani Mohan Sinha passed in S.A. No. 520 of 1988 that the Governing Body which is claimed to be the real Governing Body by the defendants (appellants in the said appeal and the appellants in the present proceedings) have not been regularly formed.

15. Therefore, there was no management of the institution situated at Subhas Pally, Bongaon which was granted affiliation by the Rabindra University on 26, August, 1976. The disaffiliation was in respect of this institution at Subhas Pally and the writ petitioner appellants can make no grievance against such action of the University when they claim to be members of the alleged Governing Body of the college at Bakshi Pally where they purported have shifted the institution since 1984. It was further argued by Mr. Sarkar that the Executive Council recorded that the college at Subhas-Pally affiliated to the University was non-existent and the self-styled institution run by the appellants at Bakshi Pally, Bongaon is neither an affiliated nor recognised Institution. According to Mr. Sarkar in the facts and circumstances of the case there was no scope for giving any opportunity to any of the parties. It was also submitted that there were two groups or factions which surfaced in 1984 and the group led by the present appellants alleged to have shifted the college to Bakshi Pally without the consent or permission of the University. Moreover, there was no properly constituted Governing Body in January, 1984 in respect of the college at Subhas Pally. So the question of giving opportunity to the appellants did not arise in as much as self-styled institution at Bakshi Pally did neither have affiliation or recognition granted by the Rabindra Bharati University. Accordingly, it was submitted that the writ petition was not maintainable.

16. On behalf of the respondent No. 4, Shri Pinaki Ranjan Bharati, it was submitted that the University was not a party to the suit and as such was not bound by any order passed in the said suit and/or appeal and that the appellants-writ petitioners have no right to move this Court under Article 226 of the Constitution of India and further submitted that in the facts and circumstances of the case, the learned trial Judge has rightly dismissed the writ petition. Our attention was drawn to various facts as well as various disputes between the parties. It was further submitted that in the facts and circumstances of the case it must be held that "Kabitirtha" college at Subhaspally is affiliated to the University and further it was alleged that the appellants were false and fictitious persons.

17. It is a case where the educational institution has been made a victim of litigation and that litigations were instituted by the parties who were interested not in the cause of the institution but to a cause which is subversive to the interest of any institution. When the University has adopted a resolution on 10th July, 1986 the order of the learned Assistant District Judge in the suit in question was in the picture and that the University proceeded on the basis of the said

judgment and that on the basis of the judgment the University had no other option but to hold that the said college was not in existence and accordingly, it was held by the University that the Institution run at Bakshi Pally, Bongaon is neither an affiliated institution nor a recognised institution and as such no approval of the Council to the Governing Body of the self-styled institution could be accorded.

18. But the situation had changed altogether after the order and judgment of the learned Assistant District Judge which was the basis of the resolution of the University in its meeting held on 10th July, 1986 had changed because of the order passed in appeal being Title Appeal No. 138 of 1986 dated 17th December, 1987 whereby the appeal was allowed in part. Thereafter the matter came up before the Division Bench of this Court in S.A. No. 520 of 1988 whereby their Lordships passed an order on 5th July, 1990 holding, inter, alia, that the "Rabindra Bharati Act, 1963 in its paragraph 50 indicate how affiliation is granted by the Executive Council of the University. It also indicates that it has the power to suspend or withdraw the affiliation, if it is satisfied that any of the conditions imposed in paragraph 50(1) of the statute are not observed. But before the cancellation of affiliation of any institution, the management of the institution shall be given opportunity of making representation before the Council. Since no such steps have admittedly been taken by Rabindra Bharati University, it may be presumed that the affiliation has been continuing so far as the college "Kabitirtha" is concerned." The dispute was set at rest and that SLP filed by the respondent No. 4, Pinaki Ranjan Bharati before the Supreme Court also failed and as a result of which the Division Bench Judgment of this Court in S.A. No. 520 of 1988 reached its finality and that in view of such final determination made in the said suit this court have no hesitation in directing the University to take steps in terms of the said judgment in as much as admittedly no opportunity was conferred to the appellants before passing disaffiliation. In view of the said judgment of the Division Bench of this court it is binding upon the writ Court. It must be held that the affiliation of the said institution had not been validly revoked, cancelled or suspended and the same is still continuing and that it is also firmly established principle for which no decision is required to be cited that an order passed in violation of the principle of natural justice is a nullity and accordingly the affiliation that was already granted by the University is still continuing and that the University is bound to recognise this legal position in as much as the University had taken steps on the basis of the order passed by the learned trial Judge which stands superseded and reversed by the order passed by the Division Bench and accordingly, the basis of the resolution of the University has been taken away by the determination made by the Division Bench of this Court.

19. Accordingly, we are of the view that the order passed by the learned trial Judge cannot stand and that the writ application is bound to succeed to the extent that the affiliation of the institution "Kabitirtha" is still continuing and the University must recognise the said institution as an affiliated institution. This is

without prejudice to the rights of the University as the University is entitled to take any decision under the power conferred upon the University in accordance with law.