

(1974) 08 CAL CK 0004
In the Calcutta High Court
Case No : Civil Revision No. 274 (W) of 1970.

Birati Siksha Samsad

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 20-08-1974

Acts Referred:

Citation : 79 CWN 826

Hon'ble Judges : M.M. Dutt, J

Bench : Single Bench

Advocate : J.N. Ghosh and Sekhar Kumar Basu, for the Appellant; R.P. Sinha, Miss Sharda Parmar, for the Respondents Nos. 1 to 4 and B.C. Ghosh Roy, for the Respondent

Judgement

M.M. Dutt, J.—The petitioner Birati Siksha Samsad is a Society registered under the Societies Registration Act, 1860 (hereinafter referred to as the Society). The principal objects of the Society are to impart and promote education and to establish, maintain, carry on and assists educational works and institutions, inter-alia, School, Colleges etc. For the purpose of carrying out the said objects the Society proposed to establish a College. On January 19, 1964 the Governing Body of the Society and the Sponsoring Committee met jointly and constituted a provisional Governing Body for the College. The Calcutta University granted affiliation to the proposed College. The Society thereafter raised public donations and collected a considerable amount. The respondent No. 5. Santosh Chandra Dutta. who was a member of the Governing Body of the College, donated a sum of Rs. 1,00,000 for the purpose of construction of the College building on condition that the College should be named as Mrinalini Dutta Mahavidyapith after the name of his mother. With the money raised by the Society a plot of land was purchased and a building was erected. The College is being held in that building. A Sub-Committee was formed at the instance of the Society for the purpose of framing the rules and regulations. The Sub-Committee framed the rules and regulations which were approved by the Society. Under the rules that were framed the constitution of the members of the Governing Body of the

College is as follows:-

Sec. I-The Composition of Governing Body of Mrinalini Dutta Mahavidyapith shall be as follows :-

(i) Eight members to be nominated by the Governing, Body of Birati Siksha Samsad to represent the following interests : the Founder Body, the Birati Siksha Samsad, Donors and the Guardians.

Note:- (1) Founder Body should be represented by valid members of the Birati Siksha "Samsad of at least 2 years standing. (2) Only those Donors would be entitled for nomination by Birati Siksha Samsad who have donated Rs. 5,000/- in cash or kind to the College.

(ii) Two members to be nominated by the Principal Donor Shri Santosh Chandra Dutta or his successor under terms and conditions of a Bond entered into with him by the Prov. Governing Body of the College (Vide Registration No.dt.....at the Dum Dum Cossipore Registry Office) and approved by the Governing Body of Birati Siksha Samsad.

(iii) ONE to be co-opted by the Governing Body of the College at their first meeting to be held after its reconstitution.

(iv) ONE nominee of the Education Directorate to be co-opted.

(v) ONE the Principal of the College Ex-officio.

(vi) Two teachers representatives to be elected by the Teachers from amongst Full-time confirmed staff, preferably representing the Day & Night Sections of the College

The Governing Body of the College was constituted in accordance with the said constitution.

2. Disputes and difficulties arose in 1966 when the Calcutta University Act was passed, and the Vice-Chancellor of the University framed the Calcutta University First Statutes, 1966, in exercise of his powers conferred by subsection (2) of Section 58 of the said Act. The relevant Statutes are Statutes 93(1) and 100(1) which are as follows:-

93. (1) Save as otherwise provided in Statute 100 the Governing Body of the college shall consist of the following members namely :-

(a) the Principal of the college, who shall be the Secretary of the Governing Body, ex-officio;

(b) two members to be elected from amongst themselves by the whole-time teachers of the college at a meeting to be convened for the purpose by the Principal of the college and presided over by him;

(c) in the case of a college receiving recurring financial aid from the State

Government, one member to be nominated by the State Government;

(d) three members to be nominated by the Syndicate of whom at least one shall be a woman in the case of a Woman's College or a co-educational college;

(e) besides the members, if any, required to be included in the Governing Body of the college under the terms and conditions of any donation to the college, such other members, being representatives of the donors of the college to whose donations no such conditions is attached as may be chosen in the following manner, that is to say-

(i) where the number of such donors exceeds five, two members, and

(ii) where the number of such donors does not exceed five, one member, to be elected by such donors by postal ballot:

Provided that, after the commencement of these Statutes no conditions shall be attached to any donation to a college requiring representation in the Governing Body of the college, and.

Provided further that no teacher or salaried employee of the college who is a donor shall be entitled to be so elected

100. (1) In the case of a college managed by any Trust or Registered Society or under a scheme laid down by a competent court, the constitution of the Governing Body shall, in so far as the terms and conditions of such Trust, Articles and Memorandum of Association of such registered Society or such scheme, as the case may be, so require, continue as such :

Provided that, after the commencement of these statutes, the terms and conditions of any such Trust, the Articles and Memorandum of Association of any such Society or any such scheme shall require the approval of the Syndicate before such Trust is created such Society is registered or such scheme is submitted to the Court

3. According to the University, the Governing Body of the said College, should be constituted in accordance with Statute 93(1), but according to the Society, the constitution of the Governing Body which was in force immediately before the framing of the said Statutes should be allowed to continue in view of the provisions of Statute 100(1). In order that Statute 100(1) should apply, it must satisfy the condition that the College was being managed by the Society. The only question, therefore, is whether the College was being managed by the Society before the said Statutes were framed.

4. On behalf of the respondent University it has been strenuously urged that as there was a Governing Body which was responsible for the management of the College, it cannot be said that the College was being managed by the Society. On the other hand, it is contended by Mr. Ghose learned Advocate appearing on behalf of the Society, that the College was and is being managed by the Society and, as such, Statute 100(1) will apply. In this connection it may be stated that

the College is affiliated to the Society. Under Rule 33 of the Rules of the Society on affiliated institution of the- Society may be managed either by the Governing Body direct or by a Managing Committee appointed or approved by the Governing Body or by individual or individuals appointed by the Governing Body. Under Rule 39, the Governing Body of the Society shall have power to remove or dissolve a Managing Committee once appointed and to appoint another in its place subject to Rule 36. Rule 36 provides, inter alia, that in case of educational institutions the constitution of the Managing Committee shall be in conformity with the relevant rules and regulations of the appropriate statutory body. It thus appears from the Rules referred to above that the ultimate control of the College vests in the Society. The Society has the power to remove or dissolve the Managing Committee or the Governing Body of the College. Even under the Rules framed by the Society for the Governing Body of the College, the Governing Body cannot alter the Rules without a previous intimation to the Society. It is contended by Mr. Ghose that the Governing Body of the College is really a creature of the Society. It is true that the Governing Body of the College has to administer the day to day affairs of the College; but, at the same time it is under the control of the Society. I have already referred to Rule 33 of the Rules of the Society and it is clear that the College is being managed by the Society through a Managing Committee. It may be that the Society does not manage the College directly, but the college is being managed indirectly by the Society through the Governing Body of the College which has been constituted by the Society itself. In my opinion, in construing Statute 100(1) one should not take a narrow and too technical view of the same particularly of the connotation of the word "managed". After considering the facts and circumstances of the case, I am of the view that it is a case where a College is being managed by a registered Society and as such, Statute 100(1) is attracted and Statute 93(1) does not apply.

5. Mr. Ghose however, fairly concedes that there should be some alterations or amendments in the constitution of the Governing Body of the College. He submits that in the clause (1) of section 1 out of the 8 members to be nominated by the Governing Body of the Society, at least two of them should be guardians. There should also be an addition of a clause to the constitution of the Governing Body of the College similar to clause (d) of Statute 93(1). The amendments which have been proposed by Mr. Ghose are not objected to by any of the parties. In these circumstances, in the interest of the Institution concerned, I am of the view that these amendments should be made in the constitution of the Governing Body which has been quoted above. It is submitted that the said amendments will be made by the Society within a fortnight from date. It is also stated by Mr. Ghose that the Society will re-constitute the Governing Body of the College within two months from date in accordance with the amended constitution. In my opinion, the proposed amendments are quite reasonable. Accordingly, I direct that the constitution of Governing Body be amended within a fortnight from date, as pro-posed and that the Governing Body reconstituted in

accordance with the amended constitution within two months from date. It appears that by an interim order of this Court, Mr. Sushil Kumar Biswas, Advocate, was appointed to supervise the affairs of the College. I think that the appointment of Mr. Biswas be continued till the reconstitution of the Governing Body of the College in accordance with the amended constitution, Further, the reconstitution or the election of the members of the Governing Body should be made under the direct supervision of Mr. Biswas. In case the Syndicate does not send its nomination, as per clause (d) of Statute 93(1) by the end of October, 1974, the Governing Body will be constituted in the absence of any such representatives of the Syndicate and it will function in accordance with its rules.

This rule is disposed of in the above terms.

There will be no order as to costs.