

(1985) 06 CAL CK 0006
In the Calcutta High Court
Case No : Civil Order No. 713 (W) of 1984

Boyerzuddin Byopari

APPELLANT

Vs

The State Of West Bengal and Others

RESPONDENT

Date of Decision : 14-06-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) 06 CAL CK 0006

Hon'ble Judges : Mukul Gopal Mukherjee, J

Bench : Single Bench

Advocate : A.B. Majumder, for the Appellant; J. Islam for the Respondents No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Gopal Mukherjee, J.—The present petitioner was the Secretary of the previous Managing Committee of Okrabari Alabaksh Uccha Vidyalaya. On August 20, 1980 gave a donation of Rs.500/- to the school and claimed to be a donor within the meaning of sub-rule (3) of Rule 5 of the Management of Recognized Non-Government Institutions (Aided and Unaided) Rules 1969, as amended by notification of the petitioner that as donor his name ought to be figuring in the list of voters for the purpose of election for the re-constitution of the Managing Committee of the school. It is the stipulation in the rule that once a person becomes a donor, he continues as such for 2 consecutive terms of 3 years each and his name is borne out in the register of voters for the constitution of the Managing Committee of a secondary school. His name was duly enlisted in the voters list for 1980 and he was in the Managing Committee as Member from the donor category.

2. By circular No. S/MC-386/81 dated 7.7.81 the State Government by a notification of the Education Department changed the Rule for Management of Recognized Non-Government Institutions (Aided and Unaided) so as to abolish altogether the donor category of members. In compliance with the said circular

the Respondent Managing Committee did not record the name of the petitioner as a donor in the voters list dated 12.12.83. The petitioner claims to have lost his substantive right to contest the election for reconstitution of the managing committee as a member from the donor category.

3. It is the further contention of the petitioner that though the election for reconstitution of the managing committee of the school was held, the office bearers of the managing committee were not elected. He submitted that 21st January 1984 is the date fixed for holding a meeting for the said purpose.

4. The petitioner submitted that by virtue of the circular bearing No. S/MC-386/81 dated 7.7.81 the Respondent State Government took away his substantive right to be elected as a donor member for two consecutive terms of 3 years each in the managing committee of the school. The second terms were in begin with the election in 1983.

5. The petitioner further contended that the doctrine of promissory estoppel do come into play and in view of a particular representation made by the school that he was to be categorized as a donor member for the purpose of election to the managing committee of the school, he did donated a sum of Rs.500/- on 20th August, 1980 and he had already enjoyed the term of office for the first three years and he was entitled to be re-elected over again, he being the only one from the donor category for the election held in 1983.

6. I have given a understand that on 18.11.83 the election of the managing committee was held and the Government nominee was also placed and on 12.1.84 the office bearers election did take place and the new managing committee took over charge and started functioning; but because of the order of injunction passed by this court, there was an impediment caused to the functioning the managing committee and as such initially, a Drawing and Disbursing Officer and subsequently an Administrator had to be appointed, so as to run the day to day administration of the school since the managing committee could not function.

7. I have gone through the reported decision in (1) Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., , which is the leading case on promissory estoppel as also the subsequent decision in (2) Radhakrishna Agarwal and Others Vs. State of Bihar and Others, wherein the jurisdiction of the High Court under Article 226 of the Constitution to intervene in respect of contractual field between the State Government on the one hand and the private litigant on the other, was elucidated further. I do not think that in the facts and circumstances of the present case there was an representation by the State Government made to the petitioner pursuant to which the petitioner changed his stance to his detriment and because of the subsequent conduct on the part of the State Government, he is a lower thereby. Whatever changes has been brought in the rules regarding Management of Non-government Institution (Aided and Unaided) prospectively with regard to donor category of members, if may at best be a supervening

impossibility so that the petitioner may now be reckoned as a donor category of member for holding an office in the managing committee of the school. It is not at all a case of promissory estoppel as contended by the petitioner so as to call for interference by this Court under Article 226 of the Constitution of India on the basis of the reported judgment in Union of India & Ors. v. M/s. Anglo-Afgam Agency & Ors. (Supra).

8. It is in the fitness of things that the Managing Committee should be allowed to function and the Administrator should handover charge to the Managing Committee. The petitioner cannot stifle unnecessarily the functioning of the Managing Committee, which was duly elected in accordance with law. The writ application stands dismissed and all interim order is vacated.

There will be an interim order as to costs.