
(2008) 07 CAL CK 0066
In the Calcutta High Court
Case No : Writ Petition No. 3612 (W) of 2008

Chittaranjan Si

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Citation : (2009) 1 CALLT 140 : (2008) 4 CHN 260

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : P.S. Deb Barman and Tarun Das, for the Appellant; Jamini Banerjee and Biswajit Banerjee for Respondent No. 9 and Seba Roy and Sabita Roy, for the Respondent

Final Decision : Allowed

Judgement

Soumitra Pal, J.—The petitioner, the first life member has challenged the action of the Additional District inspector of schools (S.E) Contai Sub-Division, Purba Medinipur, respondent No. 5 in nominating the respondent No. 9 to represent the next Managing Committee (for short "the Committee").

2. The facts in brief are: that in the year 1995 the petitioner had donated a sum of Rs. 20,000/- and by a memo No. 578 dated 20th October, 1995 was accepted as the second life member of the school. Subsequently, the petitioner became the sole life member. On 30th April, 2004 the respondent No. 8 was accepted as a life member. On 20th April, 2005 the Committee of the school was reconstituted. The respondent No. 8 represented the Committee from the category of life member. On 21st September, 2007 the respondent No. 9 was accepted as a life member. Thereafter, in accordance with law, pursuant to the elections held in the month of January/February, 2008 the Committee was reconstituted. By memo dated 18th February, 2008 the respondent No. 5 had nominated the respondent No. 9 to represent the newly constituted Committee from the category of life member. According to the petitioner, since the respondent No. 9 was not previously subjected to any rotation under Rule 6A of

the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 (for short "the Rules") the said respondent is not entitled to be nominated. Moreover, as there is no dispute regarding the formation of the Committee and the challenge is with regard to the nomination of the respondent No. 9, the writ petition is maintainable.

3. Learned Senior Advocate appearing on behalf of the respondent No. 9, justifying the nomination and referring to the Craies on Statute Law, submitted that the primary duty of a Court of law is to find the natural meaning of the word rotation used in the context in which it occurs. In the instant case as the said respondent on 21st September, 2007 was accepted as a life member which is in consonance with the notification dated 4th December, 1981 and in view of proviso to Rule 6A(1), such nomination from the category of life member is just and proper. Moreover, as there is an alternative remedy under Rule 6(5) for redressal of the dispute, the writ petition is not maintainable.

4. The writ petition was taken upon 15th April, 2008 when directions were issued for filing of affidavits. Respondent No. 9 had filed his affidavit-in-opposition. Reply to the same is on record.

5. In order to appreciate the issue it is necessary refer to the order impugned which is as under:

Memo No. 3162 - c Date. 18.02.08 From: The Addl. District Inspector of Schools

(S.E) Contai Sub-Division,

To: The Headmaster,

Haripur High School,

P.O. Madhabpur, Dist. Purba-Medinipur

Sub : Acceptance of 3rd. Life Member of the School,

Ref : School's Memo No. 279(H) B, dt. 21.1.08

In reference to the above, the undersigned has to inform him that Sri Buddhadev Maity, Vill. Haripur, P.O. Madhabpur, Dist. Purba-Medinipur was hereby accepted as the 3rd Life Member of the School vide this office Memo No. 1402-C, dt. 21.9.07.

The representation on the category of Life Member will be made by rotation and Sri Buddhadev Maity will represent the next Managing Committee.

Additional District Inspector of Schools

(Secondary Education) Contai Sub-Division.

The relevant portion of Rule 6A of the Rules is extracted hereunder:

6A. Manner of formation of Committee.-(1) Persons whose names are entered in

the register of eligible persons as founders shall be the member of the Committee, one at a time by rotation according to the procedure to be determined by the Director or by an officer authorised by him in this behalf:

(i) If a person has paid not less than Rs. 20,000/- or its equivalent to the Institution, he shall be a Life-Member of the Committee during his life time or shall have the right of nominating a person as a member on the Committee. But a person who has donated Rs. 10,000/- or more in cash or kind immediately preceding the date of issue of Notification No. 855-Edn. (S), dated the 23rd December, 1980, shall, however, continue as a Life-Member of the Committee:

Provided that when there are more than one Life-Member and the Life-Member selected by rotation by the Director or by an officer authorised by him in this behalf, declines to serve on the Committee, the Director or the officer authorised by him in this behalf may select any other Life-Member from the panel, who is willing to serve on the Committee;

5. In this context it is appropriate to refer to the notification dated 4th December, 1981 regarding the determination of the procedure as required in Rule 6A(1) of the Rules which is quoted hereunder:

Government of West Bengal

Directorate of Secondary Education

6, Bhabani Dutta Lane, Top floor, Calcutta -73

No. 4000(16) Sc/S Calcutta, the 4th December, 1981.

From:

The Director, Secondary Education, West Bengal

To

The District Inspector of Schools (SE)

Sub: Determination of the procedure as required in Rule 6A(1) and 6A(1)(i) of the Rules of Management of Recognised Non-Govt. Institutions (Aided and Unaided), 1969 as published after Amendments in Govt. Notification No. 640-Edn. (S) dated 24.6.81.

His/her attention is drawn to the above and he/she is requested to follow the procedure as determined hereunder in respect of Founders and Life members for the Managing Committees to be constituted/reconstituted according to above rules.

The District Inspector of Schools (SE) is authorised by the Director of Secondary Education, West Bengal to approve of the rotation of Founders and Life-members in the Managing Committees in the manner, indicated below:

(1) In case of founders, serial as it stood in the first resolution of the school in

this behalf should be strictly adhered to and the persons named first therein will serve as founder in the Committee to be constituted/reconstituted and other will serve as founders in the subsequent Committees according to the serial mentioned above. The rotation in this manner will be completed after the last name serves the Committee.

(2) The rotation of Life-Members will be determined according to the dates of donation. In other words the person who donated first should be given first chance and so on until the rotation is completed.

This procedure of approval of life-member/Founder does not however, apply to the Managing Committees to be constituted/reconstituted according to Special Constitution for which papers are to be submitted to this Directorate for taking necessary action from this end.

Sd/-

S. Rai Choudhuri

Director of Secondary Education

West Bengal

6. Rule 6A stipulates that Life Members, one at a time, shall serve on the Committee on a rotational basis.

7. Now, the issue of rotation does not arise when there is one life member. When a second life member enters the fray the membership on the Committee naturally alternates between these two life members.

8. So when the tenure of the Committee of the period spanning for the period 2002-2005 came to an end in 2005, the petitioner, the first life member, had to bow out because by that time there had been inducted in 2004 a second life member, that is, respondent No. 8. Quite naturally when the new Committee was formed in 2005 for the tenure of 2005 - 2008 the second life member, was called to serve on the Committee.

9. Now a complication has arisen because that Committee has completed its term in February, 2008 and there has been a new life member, respondent No. 9, in September 2007. The bone of contention is who should serve as the sole representative on the new Committee formed for the period 2008-2011 - whether the first life member, that is the petitioner, or chronologically, the third life member respondent No. 9.

10. There is no dispute that the appointment should be on a rotational basis. According to the Shorter Oxford English Dictionary, 1959 Edition "rotation" means "the action of moving round a centre, or of turning round on an axis", "the fact of coming round again in succession" and in the context of the present issue "regular and recurring succession in office, duties, etc., of a number of persons". A distinction should, therefore, be made between "rotational", that is,

recurring succession, and "non-rotational", that is, ordinary, lineal succession)

11. Let it be assumed for brevity and for the sake of understanding chronologically, petitioner - the first life member is A; the respondent No. 8, the second life member is B and the respondent No. 9, the third life member.

12. In case of ordinary, lineal succession the "C (respondent No. 9) the third life member should have been on the new Committee after B (respondent No. 8) has served his tenure. But where the succession is rotational, that is, recurring succession, the exact position of the three life members A, B, C, at the time when the Committee of 2005 - 2008 was being formed in 2005 has to be ascertained. The first life member "A" (the petitioner), has made his exit; "B" (the respondent No. 8) the second life member was the new incumbent and the third life member "C" (respondent No. 9) who became a life member only in September 2007 was nowhere in the orbit of succession at that time. So in 2005 the first life member "A" (the petitioner) had reverted to the second position. So when C, the respondent No. 9 becomes the third life member in September 2007 he is third in the orbit after "B" the serving member and "A" (the first life member) the petitioner who since 2005 when the 2005-2008 Committee was formed, was expectantly waiting in the wings to serve on the Committee 2008 - 2011.

13. Had the basis of appointment been chronological then the order would have been (A, B, C, that is first, second and third life member respectively) - "A" (the petitioner) and "B" the respondent No. 8 and "C" the respondent No. 9 in that order. But once the system is rotational then in the case of three members, if "B" is serving on the committee and the third life member "C" at the beginning of the tenure of the committee is not visible then "A" (the petitioner) is already second in the queue, in a rotational system. In no way can "C", the respondent No. 9, the new life member can jump the queue and elbow out the incumbent - in -waiting "A" (petitioner) in a system of rotational succession. Hence, the appointment of the respondent No. 9 as a member of the present Managing Committee 2008 - 2011 is against the principles of the rotation and vitiates the entire process as laid down in the Rules because hypothetically then anyone can serve on the Committee by becoming a life member just a couple of months before the formation of a new Committee.

14. During argument it was submitted that the nomination of the respondent No. 9 is in consonance with the notification dated 4th December, 1981. In my opinion, the said notification does not come to the aid of the respondent No. 9 as there is nothing particularly in Clause (2) to justify the appointment of the said respondent as in between "A" and "C", "A" is the previous donor. Further, any notification cannot be in contradiction to statutory rules which insists on nomination on a rotational basis.

15. With regard to the submission of the respondent regarding the existence of alternative remedy, in my opinion since there is no dispute regarding the

formation of the Committee and the action of the respondent No. 5 in nominating the respondent No. 9 is under challenge, the provisions under Rule 6A(5) are not attracted. Further, assuming the nomination of the respondent No. 9 was under proviso to Rule 6A(1) such an action under the said Rule is uncalled for, as the petitioner did not decline to serve on the Committee.

16. Therefore, the appointment of the respondent No. 9 is illegal. The impugned memo dated 18th February, 2008 cannot be sustained and is, thus, set aside and quashed. The writ petition is allowed.

17. No order as to costs.

Later:

18. After judgement is delivered, learned Senior Advocate appearing on behalf of the respondent No. 9 prays for stay of operation of the judgement and order.

19. Considered the prayer for stay. Prayer is refused.

20. Urgent xerox certified copy of the judgement and order, if applied for, be given to the appearing parties on priority basis.