
(1981) 06 CAL CK 0015
In the Calcutta High Court
Case No : Matter No. 1891 of 1980

Debi Prasad Bagaria and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-06-1981

Acts Referred:

Managing Committee of Aided Primary Schools in Calcutta Rules — Rule 6, 7

Citation : AIR 1982 Cal 587

Hon'ble Judges : Bimal Chandra Basak, J

Bench : Single Bench

Advocate : Bachawat, for the Appellant; Netai Banerjee and A.P. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Bimal Chandra Basak, J.—The facts of this case as set out in the petition are as follows :--

The petitioners are the President and Secretary respectively of the Managing Committee of Savitri Pathashala, a primary school situated at No. 5/D, Muklaram Babu Street. Calcutta-7 (hereinafter referred to as the said School). The petitioners state that since 1933 prominent members of the Marwari Community in Calcutta made and collected donations from various persons from time to time for, inter alia, to take charge of, maintain, manage and improve a Girls' School known as the Savitri Pathashala together with its properties and to take the control of or establish any other schools for Girls elsewhere as might be considered necessary or desirable and to spread education among and to promote the religious, moral and intellectual advancement of high caste Up-country Hindu Girls and particularly Marwari Girls belonging to Sat Grihastha as that is to say, respectable families professing the Sanatan Hindu and Jain religion. The petitioners state that with some prominent members of the Marwari Community, i.e., Rai Bahadur Hozarimull Dudwe-wall, Rai Bahadur Badri Das Goenka, Rai Bahadur Ramdev Chokhani. Rai Bahadur Ramji Das Bajoria, Sri

Gobar-dhan Das Shroff. Sri Ram Kumar Jhun-jhunwala and Sri Suraimull Jalan constituted themselves trustees for carrying out the said purposes. The petitioners state that on 24th Apr. 1970. Savitri Educational, and Charitable Trust was executed and Mohanlal Jalan, Hari Krishna Jhajheria since deceased and Parmeshwar Lal Kedia were and except Hari Krishna Jhajheria. along with others still are the trustees of the said Savitri Educational and Charitable Trust. The petitioners state that the objects and purposes of the Trust as declared in the said Trust Deed are, inter alia, that the trustees would continue to allow the said Savitri Pathshala to be run in accordance with the object of the said Trust. The petitioners state that the said Savitri Pathshala have two sections, primary and secondary. Pursuant to the direction given by the respondent No. 3 a separate Managing Committee of Savitri Pathshala (Primary Section) in May, 1979, was constituted with two elected Guardians' representatives. two elected teachers' representatives and two members nominated by the Savitri Educational and Charitable Trust with the Head of the Institution as ex-officio member. Reports of the said constitution of the Managing Committee were duly, submitted to the respondent No, 3 and approval for the said constituted Managing Committee was sought for from the respondent No. 3 but it is alleged that the petitioners are not aware of what has happened to the fate of said papers seeking approval of the said Managing Committee. After the said constitution of the Managing Committee, the members held office bearers election and started functioning for the well being of the said institution. Thereafter Sri Biren Mishra. Dy. Inspector of Schools attached to the office of the respondent No. 3 visited the said primary section of the school several months ago and enquired about the constitution of the Managing Committee and also of the procedure for holding election. At the time of the said enquiry by the said Dy. Inspector of Schools the Head Teacher explained everything to him in details and relevant papers and/or records were also shown to the satisfaction of the said Dy. Inspector of Schools. The petitioners state that thereafter the Managing Committee held several meetings and took some important decisions in the management of the said primary section of the school and started functioning for the better and well being of the said primary school. The teachers and staff also got their respective D.A. from the respondent No. 1. The petitioners state that one Mr. Biren Mishra, a Sub-Inspector of Schools attached to the office of the respondent No. 3 visited the school without prior intimation to the petitioners and without consulting the petitioners and/or the Managing Committee arbitrarily fixed the pay scale of the teachers of the said school. The petitioners state that the petitioner's school is an unaided primary school and the teachers and some non-teaching staff of the said school receive only D.A. from the Government of West Bengal. The petitioners state that the petitioners did not accept the said pay scale fixed arbitrarily by the said Sub-Inspector of Schools and the Managing Committee of the said School fixed the pay scales of the teaching and non-teaching staff of the schools which is higher than the pay scale fixed by the said Sub-Inspector of Schools and started paying them accordingly. The petitioners state that the said Sub-Inspector of Schools visited the school immediately following the day of

payment of salary fixed by the Managing Committee of the school and became very much annoyed after having learnt that the Managing Committee of the said school did not accept the pay scale fixed by him arbitrarily and without jurisdiction and asked the Head Teacher to increase the salary of Mr. Darp Narayan Rai, a teacher of the school. Inasmuch as according to the petitioners the said Sub-Inspector of Schools had no jurisdiction and/or authority under the law to order for the increase of salary of a particular teacher, the Managing Committee did not comply with his said order. It is alleged that Darp Narayan Rai was a teacher in the secondary section of Sa-vitri Pathshala and due to his misbehaviour with a student, he was dismissed from the said Secondary Section but out of compassion and on humanitarian ground, the said Darp Narayan Rai was appointed as a teacher in the primary section. It is alleged that on the 18th May, 1980, the Head Teacher of the school convened a meeting of the teachers of the said school and in the said meeting requested the teachers to make the ensuing annual function of the said school, a success. At the said meeting, the said Darp Narayan Rai passed highly defamatory and objectionable remark at Smt. Dhan Kumari Karmacharyya, a lady teacher of the said school who is also a teachers' representative on the Managing Committee of the said school. The said Darp Narayan Rai also attempted to assault the said lady teacher but fortunately the said attempt was foiled by the clerks of the said school and of special class. Immediately after the said incident Darp Narayan Rai was placed under suspension by the Head Teacher of the school. It is alleged that after said suspension, the said Darp Narayan Rai started bearing grudge upon the petitioners and went to the office of the respondent No. 3 and made some baseless and unfounded allegations against the Managing Committee of the said school. It is alleged that on the day following the day of making such representation and baseless and unfounded allegations against the management of the school, the said Sub-Inspector of School, Mr. Biren Mishra visited the said school and made certain enquiries and showed unusual interest in the affairs of Darp Narayan Rai. It is stated that certain correspondence passed between the said Sub-Inspector Mr. Biren Mishra and the Head Teacher of the school regarding the said Darp Narayan Rai. It is alleged that in the afternoon of 10th July, 1980, the petitioner No. 2 who is the Secretary of the Managing Committee of the school, received a Notice from the respondent No. 4 informing that the respondent No. 4 had been appointed as Administrator of the aforesaid school and that he would take possession and charge of the school at 9 A.M. on the 11th July, 1980. A copy of the said notice issued to the petitioner No. 2 by the respondent No. 4 is annexed to the petition. Thereafter the petitioner No. 2 by his letter dated July 11, 1980 informed the respondent No. 4 that the petitioner No. 2 did not receive any order of supersession of the Managing Committee of the school and also the appointment of the Administrator of the said school. The petitioner No. 2 also stated in the said letter that the Head of the institution was having no power and/or authority to hand over charge to the respondent No. 4 because the Head Teacher was not in charge of the Management of the said school and the petitioner No. 2 stated that the respondent No. 4 could not have

any occasion to take over charge from the Head of the institution, In the said letter the petitioner No. 2 requested the respondent No. 4 to send a copy of the primary education memo No. 1656/1(4)S.C./P dt. 20/21st May 1980 immediately. A copy of the said letter is annexed to the petition. It is alleged that no reply has been received as yet. It is alleged that on the 11th July 1980, the respondent No. 4 purportedly took over charge of the school from the Head Teacher of the said School and the petitioner No. 2 sent a letter to the Head Teacher stating that the Head Teacher had no authority and/or power to hand over charge of the school on behalf of the Secretary of the school and it was stated in the said letter that the action of the Head Teacher in purportedly handing over charge of the school to the respondent No. 4 was unauthorised, illegal, void ab initio and prejudicial to the interest of the school. The petitioner No. 2 also asked for an explanation from the said Head Teacher for his said unauthorised and illegal conduct. A copy of the said letter dated July 11, 1980. issued by the petitioner No. 2 is annexed to the petition. It is alleged that no reply has been received as yet. It is alleged that at the said purported handing over and taking over charge of the school by the respondent No. 4. the said Darpa Narayan Rai, the suspended teacher was present in the school premises and he brought out school registers and several papers and documents of the school from the almirah and produced the same before the respondent No. 4. It is further alleged that the Head Teacher also handed over the keys of the almirah of the said school to Sri Darpa Narayan Rai who opened the said almirah and brought out the said records and/or registers of the school. It is stated that on 17th July, 1980. the petitioner No. 1 wrote a letter to the respondent No. 2. In the said letter the petitioner No. 1 stated that on the 10th July, 1980, the petitioner No. 2 who is Secretary of the school received a letter bearing No. 1 ADM dt. 8-7-80 written by the Dy. Assistant Inspector of School (S.E.) Calcutta. It was also stated by the petitioner No. 1 that in his said letter, the said Dy. Asstt. Inspector of School has referred to the Directorate of Primary Education Memo No. 1656/1 (4) S.C./P dt. 20/21st May, 1980 but neither the petitioner No. 1 nor the petitioner No. 2 received any such memo or a copy thereof. In the said letter the petitioner No. 1 also stated that the Managing Committee of the said school was duly constituted and reports and/or information with regard to the said constitution of the Managing Committee was submitted to the authorities concerned. In the said letter the petitioner No. 1 stated that the purported supersession of the Managing Committee and the appointment of Administrator in the said school was illegal unauthorised and against the principles of natural justice. The petitioner No. 1 also stated that no notice and/or hearing was given to the petitioner before passing of the said purported order of said supersession and appointment of Administrator. In the said letter, the petitioner No. 1 requested the respondent No. 2 to send the said memo bearing No. 1658/1(4) S.C./P dt. 20/21st May 1980 and a copy of the report of the respondent No. 3. A copy of the said letter is annexed to the petition. It is alleged that neither the documents asked for have been supplied nor any reply has been received as yet. The petitioners state that the clerk of the said school has supplied them with a

copy of the said order of supersession and the appointment of Administrator in the said school and from the said copy, the petitioners learnt that the respondent No. 2 in exercise of powers under Order No. 750/EDN dt. 21st Oct. 1970, responded the Managing Committee (sic) said school and appointed respondent No. 4 as the Administrator of the said primary school with immediate effect. It was further stated in the said memo, that it appears, from the report of the respondent No. 3 that the present Managing Committee of the said school was not properly functioning and steps taken for reconstitution of the committee in May 19, 1970 suffered from gross procedural defects. A copy of the said memo is annexed to the petition.

2. The petitioners challenge the said order No. 750-EDN (1) dated 21-10-70 on various grounds.

3. An affidavit-in-opposition has been affirmed in this case by one Netai Banerjee on behalf of the respondents Nos. 1, 2, 3 and 4, which states inter alia as follows: It is stated that the primary school named Savitri Pathshala was accorded recognition in 1964 with effect from 1-1-64. Renewal of recognition has been accorded and till today the school is a recognised one. The teachers are being paid Government B.A. only from the Government. After introduction of Free Education Scheme in 1974, the school authority did not come under the scheme. To run the school the school authority only collects fee from the public @ Rupees 10 per Class I to IV and Rs. 12 for Class V only. Besides tuition fees the school authority charges session fee @ Rs. 20 a year per capita. Up to June 1978 the primary school had been functioning in the same building and same time with the High School. At that time the school accounts were being maintained with Secondary section. Since July 1978 the primary section has been detached with its accounts and other activities as the Secondary section of the school has been taken over by the Government. It is admitted that a committee was formed but it is stated that it was not formed as per rules. Managing Committee of a primary school is formed as per Government Order No. 750-EDN. (P) dated the 21st October, 1970. An existing Managing Committee may also apply for special constitution as per part 10 of the above noted Government order. There has been no approved Managing Committee of the School. The Trust Body was not granted special constitution so the committee constituted by the Trust Body is not regular and valid. Moreover the formalities for constitution of Managing Committee were not observed. It is stated that at the time of inspection of the school it was found by the Deputy Inspector of School, that the Managing Committee of the Savitri Pathshala "Primary Section" suffered from gross procedural irregularities as such the said Managing Committee was not functioning properly. The Government in their Memo No, 381-EDN (P) dated 14-5-1986 desired that in the interest of school Sri P. M. Mediya, Deputy Inspector of School Calcutta be appointed the Administrator of the school. The Director of Primary Education by office Memo No. OP-3P-78 dated 20th, 21st May 1980 appointed him as Administrator of the said Primary School. It is denied that the said school (primary section) was functioning properly as alleged or at all. It is stated that the Managing

Committee was not functioning properly as it was not formed in accordance with law. It is stated that the teachers were not getting salary regularly and at par with the scale prescribed for the primary teachers by the Government. It is stated that if the trust body agreed to come under the scheme of free education the teachers might not have suffered. It is stated that Sri Biren Mishra, Deputy Assistant Inspector of Schools, Calcutta visited the school as it is under his jurisdiction. He has the right to request the authority to pay the teachers as per rules to see whether the standard of education is maintained. Accordingly he had got jurisdictional authority to advise the management to fix up the pay of teachers as per rules. It is stated that in terms of Government Order No. 1366-Edn (P) dated the 28th Nov. 1977 it was decided that each D.A. getting school should pay their teachers as per scale laid down for the teachers of fully aided schools, It is denied that the Managing Committee of the school fixed the pay of the teacher as per Rules as alleged or at all. It is also denied that the Sub-Inspector of School fixed the pay of the teacher arbitrarily as alleged. It is stated that the Managing Committee pay the teacher as per their wishes and they do not follow the Rules laid down by the Government to pay the salary of the teacher of the primary section. It is stated that the Deputy Inspector of School did not accept the payment of teachers fixed by the Managing Committee because it was found that the salary had been fixed arbitrarily. It is further stated that the Deputy Assistant Inspector of Schools has power and jurisdiction to suggest the payment of the teachers in accordance with the Rules if it is found that the salary has been fixed arbitrarily. It is stated that the Deputy Assistant Inspector of Schools did not order but requested the Committee to eradicate irregularity. It is a part of his duty to advise the Managing Committee to follow the departmental orders and rules. It is stated that the respondent No. 4 had been appointed administrator and he wanted to have possession of the charge of the school on 11th July 1980 at 9 a.m. with prior intimation. It is also stated that the Administrator of the School intimated the committee regarding taking over the charge. As such it is denied that the Managing Committee did not receive any order of appointment as alleged or at all. It is further stated that the Secretary and the Head Teacher had been sent copies of the appointment of the Administrator by the Director of Primary Education West Bengal by Memo No. 1656/1(4) S.C./P dated 20-5-1980. It is stated that at the time of taking over charge of the school by the Administrator four persons including the President of the un-approved committee were present and they did not object to taking over the charge by the Administrator. It is stated that Shri Darpa Narayan Rai helped the Head Teacher regarding taking over the charge of the school by the Administrator, It is stated that the Head Teacher told the Administrator that he received a letter in time regarding appointment of the Administrator and informed the same to the President and Secretary of the School (Primary) accordingly. It is also stated that they received a letter of supersession of the Managing Committee. In the said letter it was specifically mentioned that there were procedural defects in the constitution of the Managing Committee. On request of Mr. Bagaria the Director of Primary Education again sent a letter

bearing Memo No, 2425/13 S.C.P./P dated 24th July 1980 along with a copy of the order 1656/14 S.C./p dated 20-5-80. During inspection it was found that the voters' list was approved by the Head Teacher only. The Head Teacher has no power as per rules to (sic) list. The intention of the (sic) behind appointment of Administrator was that the Administrator will regularise the administration of the school and reconstitute the Managing Committee as per rules. It is stated that excepting the petitioners Nos. 1 and 2 there is none who is in the management of the school. It is stated that no recognised institution can be left to the charge of two persons only. As such the appointment of an Administrator was found necessary specially as the petitioner No. 1 Mr. Bagaria is neither a guardian nor a member of the Trust Body. It is denied that the said order of supersession and the appointment of the Administrator in the said school is without jurisdiction and without authority of law and illegal as alleged or at all. It is stated that as per Government Order No. 800-Edn (P) dated the 5th June 1974, the D.P.I, is empowered to supersede any Managing Committee if he thinks that the management of the school is not satisfactory and is also empowered to appoint Administrator or Ad-hoc Committee for the school. It is stated that the enquiry was made by the Deputy Assistant Inspector of School, Calcutta in presence of Mr. Bagaria and the Head Teacher and the report was written in their presence. The Head Teacher of the school and Mr. Bagaria know the report of the Deputy Inspector of Schools (Primary) Calcutta. It is stated that the Committee did not get approval from the appropriate authority as such the said managing committee cannot function in accordance with law. It is stated that there was sufficient material for passing the said order of supersession and appointment of Administrator when the Managing Committee was not functioning properly in accordance with law. It is denied that the appointment of Administrator and the order of supersession was made at the instance and machination of Mr. Darpa Narayan Rai as alleged. It is stated that the respondent had acted independently and not mechanically in passing the said order of supersession and appointment of Administrator which have already been stated in the foregoing paragraphs of this affidavit.

4. Another affidavit has been affirmed in this case by the Administrator Pra-sad Mohan Medya wherein he has relied on an affidavit affirmed before the Appeal Court in the Appeal preferred from the interim order passed by me. In the said affidavit it has been stated as follows:-- Sabitri Pathshala, a registered society, was registered under the Societies Registration Act (Central Act XXI of 1860) on 26th Jan, 1933, the registration number being 7546/217 of 1932-33. The building in which the Sabitri Pathshala was housed was purchased by Sabitri Pathshala by a registered indenture of sale dated the 28th day of Dec. 1949. It will appear from the Memorandum of Association of the Society, namely, the Sabitri Pathshala that 31 persons constituted the first Executive Committee of the said Sabitri Pathshala and neither Mohan Lal Jalan nor Hari Krishna Jha-jharia nor Parameshwarlal Kedia were members of the first Executive Committee. According to the Rules of the Society the Executive Committee shall consist of 31

members, and shall be elected annually. On 24th April 1979. the aforesaid Mohanlal Jalan. Hari Krishna Jhajharia and Parameshwarlal Kedia purported to create a Trust falsely alleging that the Sabitri Pathshala was under a Trust and that the properties of Sabitri Pathshala were vested in and held by the Trustees of the said Trust and further that the aforesaid three gentlemen were the only trustees of the said Trust, whereas, according to the Memorandum of Association and the Rules and Regulations in respect of the registered society, namely, the Sabitri Pathshala. the administration of the affairs of the society shall be vested in the Executive Committee. The Sabitri Pathshala was at all material times conducting a primary section in the morning from 6-30 a.m. and integrated higher secondary section from 9 a.m. to 4-30 p.m. In 1978 one Kesardeo Jhuniunwalla made an application under Article 226 of the Constitution challenging the order of the West Bengal Board of Secondary Education dated 25th Jan. 1978 appointing Shri Sudhindra Mohan Roy as the Administrator of the school giving rise to Civil Rule 6196 (W) of 1978. The said Rule was disposed of by Mr. Justice Amiva Kumar Mookherji on 24th Jan. 1979 directing the Administrator of the school to hold the election by 30th April 1979. Thereafter, an application was made on behalf of the said Administrator praying for extension of the date for holding the election, whereupon Mr. Justice Mookerji passed an order on 18th April 1979 extending the time of holding the election till 31st Aug. 1979. On 25th April 1979 the Administrator of the West Bengal Board of Secondary Education passed another order in view of the fact that the tenure of office of Shri Sudhindra Mohan Roy expired on 4th February 1979 and further that Shri Roy declined to continue and further that a vacuum had. therefore, arisen in the administration of the school, appointing Shri P. M. Medya. the deponent, as Administrator of the school. On 30th July 1979 the Administrator of the Board issued an order withdrawing the approval of the special constitution for the School. It is alleged that due to circumstances beyond his control, the deponent could not hold the election on 31st Aug. 1979, but. when he was taking steps to hold the election of the Managing Committee on or about 10th March 1980 Mohanlal Jalan and others moved an application under Article 226 of the Constitution against the Administrator of the Board and others including the deponent before T. K. Basu J. praying for an appropriate writ to cancel, rescind, revoke and/or withdraw the order of the respondent No. 1 withdrawing the approval of the Special Constitution and not to enforce the general rules relating to the formation of the Managing Committee of Sabitri Pathshala whereupon Basu J. issued a rule in terms of the prayer and granted an interim order to maintain a status quo till the disposal of the Rule. The said Rule is still pending. In the meantime, on or about 21st Dec, 1979 the appellant No. 2 purporting to sign as trustee of Sabitri Educational and Charitable Trust threatened the deponent that their Durwan will prevent him from holding secondary classes and from discharging of official activities in the school premises in the morning from 6-30 a.m. to 10-30 a.m. claiming that the premises at 5D, Mukhtaram Babu Street were Trust premises and that the Trust had allowed the premises to be used in the morning during the said period for holding classes I to V of the

Primary Section. It is stated that in fact at all material times, as stated above, the Sabi-tri Pathshala Higher Secondary Section had been holding secondary classes in the morning even before 10-30 A.M. in the said premises and accordingly he wrote a letter on 2nd Jan. 1980 to Shri P. L. Kedia, the appellant No. 2 pointing out that students, employees and teachers of the Secondary School were prevented from entering into school premises during the hours 6-30 a.m. to 10-30 a.m. The deponent also protested that an unauthorised class VI in the secondary section had been started by some persons in the school premises without the permission and approval from him as Administrator of the Secondary School and the deponent pointed out that the primary school had no authority to open class VI in addition to its own recognised classes. On 20th/21st May 1980. the deponent was appointed as Administrator of Primary Section under memo of the Director of Primary Education bearing No. 1656/1/4/SC/P dated 20/21st May 1980 and he assumed charge of the Primary Section on 11th July, 1980. It is alleged that even before he assumed charge another unauthorised Class VII was started in the said school premises between 6-30 a.m. and 10-30 a.m. and after he assumed charge of the primary section not only did the appellants and/ or their agents and/or their men forcefully continue holding classes VI and VII but started another unauthorised Class VIII. In that state of affairs, the deponent made a complaint to the Director of Secondary Education with copies to different authorities asking to issue necessary instruction to the Police Authority to see that the main gate of Sabitri Pathshala of Primary and Secondary Schools is not closed to prevent the entry of students, teachers and staff of management of the school and to see that the recognised schools run smoothly. On 16th Sept. 1980 the appellants moved this Hon"ble Court against his appointment as the Administrator of the primary section for an appropriate writ against his appointment as such Administrator whereupon a Rule was issued in Matter No. 1891 of 1980 by me and, on an application for interim order being made, I made an order on 1st Oct. 1980. restraining the respondents and the deponent as Administrator from taking any steps to convert the unaided Primary School as an aided one. It is alleged that the Sabitri Pathshala was never administered by any Trust Body and that it has at all material times been a registered society since 1933 and the premises in which the Sabitri Pathshala holds its primary and secondary school were purchased by the said Sabitri Pathshala as a registered society on 20th Dec. 1949. The Trust purported to have been created in 1970 has not or cannot have any relevance or application to the said Sabitri Pathshala and the terms of the pretended Trust Deed are not binding upon the school, and the Trustees have no legal right to manage the affairs of Sabitri Pathshala. It is also stated that no part of the assets of the school has vested or could at all vest in the Trustees. Neither the appellants nor any of the so-called Trustees have any right to interfere in the affairs of either the primary section or the integrated higher secondary section of Sabitri Pathshala. It is also stated that anti-social elements and goondas have been sent to the school to create disturbances in the school premises by assaulting the teaching staff and students. In fact, a large number of guardians made an application to the Education Minister of the

Government of West Bengal asking for immediate help to stop the raise (raid?) by the hooligans who visit the school daily at the instance of the appellants. It is stated that as stated above the Managing Committee of the said Sabitri Pathshala (hereinafter referred to as the said school) was superseded as early as 20/ 21st May 1980 and the petitioners cannot therefore claim to be the President and Secretary of the Managing Committee of the said school. It is stated that the said school has never been managed by a body of trustees and the Trust alleged in the said paragraph was constituted in 1970. the said school having been established as early as 1905 and having been constituted into a registered society in 1932-33. The school premises were also purchased by the said school in 1949. The Trust that was constituted was so formed for the mala fide purpose of capturing the school and appropriating its assets and. in any event, the said Trust does not extend to the said school in its operation and effect. The existence and continuance of the said school does not depend on the will and desire of the so-called Trustees and, therefore, the declaration, if any, to the effect that the trustees would continue to allow the said school to be run in accordance with the object of the Trust is irrelevant as well as motivated. It is stated that the said school had two sections, primary and secondary. It is stated that the deponent was appointed Administrator of the Primary Section also on 20/21st May 1980 and that he assumed charge as such on 11th July 1980. It was submitted that there is nothing in law to prevent the Managing Committee of a school from paying more than what the Government may pay according to Rules and. therefore, the Managing Committee could pay to the teachers sums in excess of the sums paid by the Government in accordance with the Rules and the scale of pay of the teachers determined. It is also submitted that the Managing Committee of the Schools often mala fide decline to accept aid from the Government in order that they may keep the teachers under their thumb and control and may treat them almost as domestic servants.

5. It is submitted that there was no valid reason, except the aforesaid mala fide purpose, for the Managing Committee not to have accepted aid from the Government.

6. It is stated that the "deponent has learnt from the said Shri Darpa Narayan Roy that the allegations that he misbehaved with a student in the secondary section or that he passed defamatory and objectionable remarks against Smt. Dhan Kumari Karmacharyya. or that he bore any grudge against the appellants or that he went to the Office of the Respondent No. 3 and made some baseless and unfounded allegations against the Managing Committee of the School are false. It is stated that the deponent took over charges as the Administrator of the Primary Section on 11th July. 1980. It is denied however, that Shri Darpa Narayan Roy brought out School register, papers and documents of the school from the almirah and produced the same before the deponent or that the Head Teacher handed over the keys of the almirah of the school to Shri Darpa Narayan.

7. It was denied that the Managing Committee was properly functioning or that

there was no material or basis for passing the order of supersession and appointment of an Administrator. It is stated that the appellants are holding unauthorised classes VI, VII and VIII in the premises of the said school even though the Management of the Secondary Section of the school has been superseded and it is continuing under the Management of me as Administrator. Any Secondary Class held in the school premises without the permission and consent of the Administrator is unauthorised. Admittedly, the appellants are holding and/or causing to be held unauthorised classes. It is denied that the premises at 5D, Muktaram Babu Street belong to the Trustees of Sabitri Educational and Charitable Trust. It is stated that the premises were purchased in 1949 by Sabitri Pathsala, a registered society. It is also stated that no coaching classes can also be held in the school premises without such permission and consent of the Administrator.

8. It is further stated that in the premises, there are five rooms in the ground floor including one class room, one general office room, one Headmaster's office, one staff room and one room illegally locked by unauthorised persons at the instance of the appellants. On the first floor there are six class rooms and one room for work Education. On the second floor there are six rooms, one library room and one room for Home Science, On the 3rd floor there are six class rooms and one Doctor's room, On the 4th floor there are four rooms for Higher Secondary Classes XI and XII including one room for optional class and one library room. Because of shortage of space in the school premises the school has rented two rooms at 5D, Muktaram Babu Street opposite to the School premises. The Primary Section consists of thirteen sections. The Primary Section is held from 6.30 A.M. to 10.30 A.M. Twenty one Secondary Section Classes are held from 10.45 A.M. to 4.30 P.M. and four Higher Secondary Classes XI and XII are held from 9 A.M. to 4 P.M. In the circumstances, it is submitted that the unauthorised special classes held on the 3rd floor of the said premises are not only illegal but also encroached upon the space for primary classes, secondary classes and higher secondary classes. The Secondary School has twenty-one sections and the Higher Secondary has two sections. It is stated that as an Administrator of the school both in its primary and secondary sections, the deponent is in-charge of the school premises as well as the administration in the affairs of the school and classes held without my sanction and permission are unauthorised and illegal.

9. On behalf of the petitioners various contentions have been raised. However, in view of the prima facie case made out by Mr. Bachawat appearing on behalf of the petitioners before he completed his submissions I called upon Mr. A. P. Chatterjee, learned counsel appearing for the State-respondents to satisfy me regarding the validity of the impugned order. The contentions of Mr. Chatterjee are as follows :-- He has firstly submitted that the order in question has been made under Rule 7 of the Rules relating to the constitution of the Managing Committee of all aided Primary schools including the junior basic school situated in Calcutta and other places. The said rules provide as follows:--

"2. The Managing Committee of an aided Primary (including Junior Basic) School in Calcutta or other Municipal area or an area constituted by the State Government as a notified area u/s 934 of the Bengal Municipal Act, 1932. or cantonment area shall be constituted as follows :--

(1) President -- to be nominated by the Director of Public Instruction. West Bengal in case of schools located in Calcutta, and elsewhere, by the District Magistrate in consultation with the Sub-Divisional Officer and the District Inspector/Inspectress of Schools,

(2) two persons interested in education of whom at least one should be a woman -- to be nominated by the Chief Inspector of Primary Education. West Bengal in case of schools located in Calcutta, and elsewhere by the Sub-Divisional Officer.

(3) two guardians if the number of pupils in a school be not less than one hundred; otherwise, one guardian -- to be elected from among themselves by the guardians.

(4) the Corporation Councillor or the Municipal Commissioner of the Corporation/ Municipal ward in which the school is situated : or if the school is situated in (a) a notified area -- a nominee of the notified Area Authority and (b) a Cantonment area -- a nominee of the Cantonment Officer.

(5) the Head Teacher of the school-Ex-officio, and

(6) two teachers if the school has not less than 6 full time teachers; otherwise one teacher -- to be elected by the full-time teachers from among themselves,

EXPLANATION :--

(a) The term "guardian" means father, or in his absence mother; or if neither of the parents is alive or if the ward is not living with any of the parents in the place where the school is situated, any other relative with whom and under whose custody the ward is actually residing. But no one shall be a guardian if he has not attained the age of 21 years.

(b) A teacher who is also a guardian shall not be eligible for election to the Committee as a guardian.

3. The Committee shall elect one from among themselves as the Secretary. But no member of the teaching staff other than the Head Teacher shall be eligible for such election.

4. Fifty per cent of the total number of members of the Committee shall form the quorum In a meeting.

5. The term of the members of the Committee shall be total of three years commencing from the first meeting of the Committee; provided that notwithstanding the expiration of the said term, the members shall continue to hold office until the new members filling the vacancies take office in accordance with the provisions of this order.

6. (1) Every Committee shall, as soon as constituted, seek and obtain the approval of the District Inspector/District Inspectress of Schools.

(2) (a) If the District Inspector/District Inspectress disapproves any Committee, he/she shall communicate the reasons thereof in writing.

(b) (i) An appeal may be preferred to the Director of Public Instruction, West Bengal against the decision of the District Inspector/District Inspectress disapproving a Committee,

(ii) The decision of the Director of Public Instruction. West Bengal shall be final.

(c) If the Committee is disapproved, it shall be reconstituted in accordance with the provisions of this order and in the light of the observations made by the District Inspector/Inspectress of Schools or the Director of Public Instruction, West Bengal.

7. In case the Director of Public instruction. West Bengal is not satisfied with the management of a school by its Committee, he shall have the right to supersede the Committee and appoint an Administrator in its place."

10. Mr. Chatterjee has submitted that Rule 7 confers a subjective satisfaction on the Director of Public Instruction. In any event sufficient reasons have been indicated. It was further submitted that it was not necessary to give an opportunity of showing cause. He has submitted that the principle of natural justice has no application in this case because it is an administrative order and confers subjective satisfaction on the Director of Public Instruction. He has further submitted that the order shows that it has been passed on the ground of various irregularities regarding the constitution of the managing committee. He has submitted that the petition itself shows that it was not properly constituted in accordance with law. On the question of the absence of any order under Rule 6. he has submitted that in this case it would appear from the petition itself that the committee was not constituted in accordance with law and accordingly Rule 6 did not apply. There was no question of making any formal order of approval or disapproval in this case. In any event it was submitted that the impugned order itself amounts to rejection of approval under Rule 6.

11. In support of his contentions Mr. Chatterjee has relied on two decisions of this Court which are as follows:-- Pan-chanan Jash v. Board of Secondary Education, West Bengal, 71 CWN 189; (Paras 27, 31 and 32); Adwaitya kr. Maity and others Vs. president, W.B. Board of Secondary Education and Others, .

12. From Rule 6 itself it is quite clear that as soon as a committee is constituted they have to seek approval of the District Inspector of Schools and in case of refusal to approve an appeal lies. In my opinion this itself contemplates that the District Inspector of Schools concerned must apply his mind and that he should pass a formal order giving reasons and communicate the same because a right of appeal has been conferred by the statute. Unless a formal order is passed giving reasons, the provisions of preferring any appeal would be futile and ineffective. It

is not open to the respondents to contend that merely because the authority was of the opinion that the committee was not properly constituted Rule 6 had no application and, therefore no order need be passed Under the said Rule. There cannot be any preconceived notion about the validity or invalidity of the constitution of the committee even before an application is made under Rule 6. Even if such an opinion is held it is a duty on the part of the authority concerned to apply his mind afresh and either to give his approval to such application or to reject the same. In my opinion it is far-fetched to suggest that merely because according to the opinion of the appropriate authority, the committee was not properly constituted, it was not necessary to pass any order in that event under Rule 6. In this particular case the allegation that such application for approval has in fact been made has not been disputed. The admitted position is that no formal order has even been passed under Rule 6.

13. Mr. Chatterjee has then sought to contend that such application has been rejected and that it would appear from the order of supersession dated the 21st May. 1980 itself. In my opinion this contention is not only far-fetched but also inconsistent. Mr. Chatterjee's client cannot be allowed to blow hot and cold at the same time. He cannot be allowed to contend that no order was needed to have been passed under Rule 6 and at the same time argue that the order of supersession and appointment of an administrator under Rule 7 is also an order under Rule 6 rejecting the prayer for approval made under Rule 6. The impugned order is an order under Rule 7 and it cannot be treated at the same time as an order under Rule 6. Apart from anything else an order under Rule 6 has to be passed by the District Inspector of Schools and the order under Rule 7 is to be passed by the Director of Public Instruction. Therefore apart from anything else the impugned order cannot be treated as composite order of disapproval required to be passed by the Inspector of Schools under Rule 6 and at the same time an order of supersession passed by Director under Rule 7.

14. In that view of the matter I reject the contention of Mr. Chatterjee that Rule 6 need not be applied in the facts and circumstances of this case. I also reject the contention of Mr. Chatterjee that the impugned order is also an order under Rule 6.

15. Further in my opinion this order of supersession is also bad inasmuch as in my opinion where the allegation is that the constitution of the committee is improper and not according to law (which is the case of the respondents herein) it is the Rule 6 which applies and it is open to the authority concerned in such a case not to give approval to the said committee. In that case Rule 7 has no application and the same cannot be invoked. In my opinion Rules 6 and 7 must be read harmoniously. An inconsistent or overlapping interpretation must not be resorted to unless there cannot be any other interpretation. In my opinion following the well known canons of interpretation of statute it must be held that the question of irregularity of constitution of a committee is the subject matter of and can be dealt with only under the provisions of Rule 6 and on that ground

application for approval may be rejected. Rule 7 comes into play only when the committee is properly constituted and is approved under Rule 6. Rule 7 on the other hand contemplates that when the D.P.I, is not satisfied by the management of the school by its properly constituted committee then he can act under Rule 7. When the question is whether it is a properly constituted committee or not, it does not come within the scope of Rule 7; only Rule 6 is attracted in that case. In that view of the matter in my opinion this order is bad when it says that the reconstitution of the committee made in 1979 suffers from gross procedural irregularity. This mixes up Rule 6 with Rule 7. An order under Rule 7 has been made taking an extraneous matter into consideration viz., alleged irregularity in respect of the constitution of the committee.

16. This order under Rule 7 also suffers from another defect. This order is vague and not clear. It mentions that the Committee is not properly functioning. No particulars have been given of the same. It also mentions that the steps taken suffer from gross procedural irregularity without giving any particulars. In that view of the matter in my opinion this is not a proper order under Rule 7.

17. This order suffers from another vice also. This order has been passed admittedly without giving an opportunity to the person concerned of being heard. It is now well settled that when an order is passed which affects the civil right of a person, he must be given an opportunity. Right to hold office is a civil right. If that right is sought to be taken away, the persons concerned must be given an opportunity of showing cause. It is now well settled that there is very little difference between quasi judicial and administrative order so far as the question of principles of natural justice is involved. When it affects the civil rights of any person, he must be given an opportunity. The petitioners concerned claim to be a properly constituted Managing Committee of the School. They are sought to be removed on certain allegations without giving them an opportunity of being heard. In my opinion this cannot be supported in law and it violates the principles of natural justice. It is also well settled that the principle of natural justice would apply to administrative orders since the concept of natural justice cannot be put into a straight-jacket. It has to be kept in mind that the persons concerned should be given a reasonable opportunity of showing cause and that the administrative authority concerned should act fairly, impartially and reasonably. Even if an Act is silent to that effect having regard to the nature of the right enjoyed, principle of natural justice must be followed unless it is impliedly overruled by the statute.

18. The cases cited by Mr. Chatterjee in support of his contention need not be dealt with in detail because the principle of law has now been well settled by the decisions in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, and all the decisions cited were decided prior thereto and to that extent they are no longer good law.

19. In respect of the contention of Mr. Chatterjee that Rule 7 confers a subjective satisfaction on the authority concerned. I need not go into the same in details. If

it is contended that it confers subjective satisfaction and not objective one. in the sense that there need not be any material at all, in my opinion then it would amount to conferring naked or arbitrary power without any guiding policy and in that any event Rule 7 will be ultra vires the Constitution being violative of Article 14 of the Constitution of India. However, it is now well settled that when two interpretations are possible, the Court should accept that interpretation which makes it constitutional in preference of that interpretation which makes it unconstitutional. In that view of the matter I must proceed on the basis that the Rule 7 does not confer any naked or arbitrary power or subjective satisfaction but an objective test has to be made out.

20. I should also point out that not only no reasons have been given but also some vague grounds have been set out in the order. No clear case has been made out in the affidavit affirmed on behalf of the State. Various inconsistent statements have been made. Further the submissions made are not only inconsistent with the order but they are also inconsistent with the averments made in the affidavit.

21. In that view of the matter I allow this application and make the Rule absolute. There will be a writ of Mandamus restraining the respondent from giving any effect or further effect to the impugned order bearing No. 1656/1 (4) S.C./P dated the 20th/21st May, 1980, being annexure "E" to the petition. The respondent-administrator is restrained from further acting as administrator of the said School. He is directed to hand over possession of the School to the petitioner immediately.

Prayer for stay of the operation of this order is rejected on the ground that this case shows gross irregularity and lack of responsibility on the part of the Officers on whom statutory powers have been conferred. As I have stated in my judgment, they have ignored the rules and they have acted improperly, unreasonably and unfairly.

22. There will be no order as to costs.