
(2018) 06 CAL CK 0184
In the Calcutta High Court
Case No : Writ Petition21200(W) of 2017

Gaffar Mondal & Anr.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 21-06-2018

Acts Referred:

Citation : (2018) 06 CAL CK 0184

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharyya, Bidhan Biswas, Susanta Pal, Ananda Dulal Sarkar, N. C. Behani, Rabiul Islam

Final Decision : Allowed

Judgement

Pursuant to my earlier order supplementary affidavit has been served on the appearing parties through their learned advocates. Fresh service had

been directed in respect of the non-appearing respondents. The tracking report filed today in Court shows that the respondent Nos. 8,9 and 10 have

been duly served. Despite such service none has appeared for the respondent No. 7. None of the parties interested in disputing the allegations

contained in the supplementary affidavit has chosen to file any affidavit whether to the supplementary affidavit or to the writ petition. Neither has it

been filed by the Board. It is only the respondents-State which through its District Inspector of Schools (S.E.), North 24 Parganas which has affirmed

and filed a report in the form of an affidavit. Paragraphs 5 and 6 of the same are reproduced below:-

5. That out of 11 contesting candidates, being serial no. 06 namely Abdul Hai Mondal the respondent no. 7 herein being Voter No. 5 and serial

No. 7 namely Julfikar Mondal the respondent no. 8 herein being Voters No. 54 are not the natural guardians of the concerned students. Both of them are the uncles of the concerned students. Whereas, the father of concerned student Rahima Khatun, are alive- namely Wahed Mondal and the father of another concerned student Mahmood Akhtar, is also alive - namely Razzaque Mondal. A copy of intimation given by the teacher in charge of the concerned Madrasah is annexed hereto and marked as letter R-1.

6. It is submitted that whenever legal guardians are alive, the respondent nos. 7 and 8 have no capacity to become a member of the Managing Committee. So long the parents are alive, the second category persons described as guardian as per Section 2(k) of Rules for Management for Recognized Non-Govt. Madrasah (Aided and non-aided) have no right to claim to be a guardian of the student.

Therefore, first, the contentions contained in the writ petition have been admitted because the State and the concerned respondents including the

Board who are all parties have chosen despite repeated opportunities not to file any affidavit in opposition. Second, for the same reason since no

affidavit in opposition has been filed to the supplementary affidavit in terms of my earlier order the respondents have all admitted the contentions that

the father of one of the students was alive and despite the aforesaid the uncle of the said student (respondent No. 8) was allowed to

contest/participate in the election to the managing committee under the guardians' category.

Third, the State has used an affidavit as extracted above admitting that this could not have been done. It will be recalled after considering my earlier

order dated May 10, 2018 that the case of the writ petitioners is that the fourth respondent by order dated July 18, 2017 as in annexure P/3 to the writ

petition has held that the election was conducted in a fair and proper manner complying with all the rules and formalities on rejecting the case of the

writ petitioners on the ground that the petitioner Gaffar Mondal and Jiraul Mondal could not produce any piece of paper or any evidence in support of

their claim that Abdul Hai Mondal and Julfikar Mondal are not the guardians of Rahima Khatoon and Mamud Aktar respectively. Rather on the

contrary on the production of the Admission Register by the Headmaster, it became manifestly clear that Abdul Hai Mondal and Julfikar Mondal were

Guardians of Rahima Khatoon and Mamud Aktar respectively.

In view of the above admissions by the State of West Bengal on oath and deemed admissions of the other respondents as also the Aadhar card

disclosed by affidavit it is clear that at least in case of respondent No. 8 he was not the guardian of the minor student Mehmood Akhtar since a natural

guardian of such student, the respondent No. 10 was still alive at the time of election and in fact, still is. Therefore, the respondent No. 5 could not

have been a natural guardian of the said ward. No order of any Court was canvassed before the Board by the respondent No. 8 to show that he had

been appointed legal guardian of the respondent No. 10's son. Accordingly, the Board never had a chance to consider this aspect of the matter

but went on to decide the matter on the basis of the admission register. Yet the admission register does not decide who is the guardian in the eye of

law.

At the time of submissions, Mr. Rabiul Islam appearing for the School produced before the Court without any affidavit the admission register of the

concerned madrasah as also two letters from the mother and father of Mehmood Akhtar. No copy has been separately given to any of the appearing

parties. Still in the interest of justice I have considered these copies. It appears therefrom that the first entry in the attendance register is of Master

Mehmood Akhtar. The names of the father and mother are duly indicated. However, in the column relating to signature of father, mother or guardian

there is signature of the present 8th respondent. The two letters dated June 1, 2016 which have been produced before the Court by Mr. Islam, learned

advocate show that on the date of the admission of the student in question the parents of this student wrote in Bengali that the entire responsibility of

upbringing and education of the student had been taken by the uncle of the said student that is to say the 8th respondent.

The Board ought to have considered that prior to recent legislation there was no power given to Muslims to adopt a child. Even in order to be

appointed a legal guardian of either the minor or the property of a minor an order of the competent Court/Authority is required. No such order has

been produced before the Board either by the madrasah or the 8th respondent. As such the Board had no jurisdiction to hold that the election of the

representatives in Guardians' category to the managing committee was

properly or lawfully conducted. The headmaster ought not to have accepted the nomination paper from a person who was not the guardian of the student within the meaning of law and as a consequence the managing committee as it now stands is not properly constituted.

I do not know whether it is possible to have a fresh election of only the guardiansâ?? representative in the managing committee. However, the present managing committee can certainly not function with the respondent No. 8 as guardiansâ?? representative. Therefore, I set aside the order as

in Annexure P-3 and quash it. The order as in annexure P/3 to this writ petition was passed as a consequence of the order dated December 9, 2016.

That order was passed at a time when the election process was going on. Only for that reason was the order made in the form in which it is couched.

That is why the representation was directed to be considered so that election to the one post in the category of guardiansâ?? representative would be

decided without affecting the entire process of election. I do not know whether only the election to the guardiansâ?? category can be held again. At

least guidelines relating to election to the managing committee of a madrasah do not appear to indicate that piecemeal election can be held. Yet this

much is clear that the managing committee as constituted with the respondent No. 8 or in fact, any person shown to be guardian during the lifetime of

the father or mother of the student in the madrasah cannot be lawful or within jurisdiction. Therefore, the election could not have been said to be fair,

proper or in accordance with law. Accordingly, the election to the representative in the managing committee from the guardiansâ?? category is set

aside and cancelled. It is held that the respondent No. 8 and any other person who purports to be guardian of a student of the madrasah whose

parents are still alive is not entitled to contest in such category. I direct the respondent No. 4 to take a decision as to whether to hold a fresh election

to the managing committee or whether in law it can hold a limited election only for the two posts of guardiansâ?? category representative which has

been assailed in this writ petition.

In case the law permitted by law the managing committee may function without those two representatives; in case the fourth respondent holds that

election must be held for the entire managing committee naturally the managing committee presently functioning would become defunct. The Board

will consider whether an administrator ought to be appointed in accordance with law. These decisions are to be taken by the Board after giving due opportunity of being heard to the writ petitioners and the present so called managing committee of the madrasah in the matter of appointment of an administrator. The entire process must be completed within a period of four weeks from the date of communication of this order. If it is decided to hold fresh election either to the two posts or the managing committee as a whole the preparation of election schedule shall be within the jurisdiction of the headmaster subject to the overall guidance of the Board and the Rules made in this behalf by the State of West Bengal. In the meanwhile as a stop gap measure this Court appoints the concerned District Inspector of Schools, (S.E.) North 24 Parganas as learned special officer to discharge the function of the administrator and the managing committee in the said madrasah. He shall work in close cooperation with the present teacher in charge and no expenses shall be made by the teacher in charge without the signature of the learned special officer. The decision shall be communicated to the writ petitioners within a period of seven days from taking such decision. The writ petition is thus allowed. There shall be no order as to costs. Copies of documents filed by Mr. Islam, learned are kept on record. The writ petitioners or any party to this writ petition may take certified copy thereof from the records.