
(1971) 08 CAL CK 0010
In the Calcutta High Court
Case No : C.R. No. 1746 (w) of 1969

Gostha Behar Ghose

APPELLANT

Vs

University of Calcutta

RESPONDENT

Date of Decision : 06-08-1971

Acts Referred:

Calcutta University Act, 1966 — Section 58
Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 17

Citation : AIR 1972 Cal 61

Hon'ble Judges : Anil Kumar Sen, J

Bench : Single Bench

Advocate : N.C. Chakravarti, Santinath Mukherji and Satyajit Banerji, for the Appellant; G.P. Kar and B.K. Dutta, (for Nos. 1 to 4), A.D. Mukherji and M.M. Mullick, (for Nos. 5, 6, 7, 10, 12, 13 and 14), for the Respondent

Judgement

Anil Kumar Sen, J.—This Rule was issued on a Writ petition. The dispute involved is one over reconstitution of the governing body of Nandalal Ghose B. T. College on the enforcement of the Calcutta University First Statutes, 1966 (SC) (hereinafter referred to as the First Statutes).

2. The first two petitioners are the shebaites of Sri Sri Lakhi Janardan Thakur. By a deed dated May 17, 1968 they conveyed certain lands and a two storied building to petitioners 3 to 5 and respondents 5 and 9 as trustees for setting up a B. T. College to be named after late Nandalal Ghose, the father and grandfather of the petitioners 1 and 2 respectively. Under the said deed the settees were constituted members of a provisional committee who would establish the college contemplated by the trust. But the deed further provided that after such establishment the committee or the governing body of the college would be formed according to law, rules and regulations of the University of Calcutta for the management of the said college. In such committee, however, a settlor or one of their successors will be a life member and further a settlor or settlors' successors will nominate one local member.

3. The settees established a college. On March 26, 1968 they applied to the University authorities for affiliation of the said college from the academic session 1968-69. On a report submitted after enquiries by Sri K.K. Mukherjee and Sri A.C. Banerjee the Calcutta University Syndicate by a resolution dated July 5, 1968 granted affiliation subject however to the implementation of certain conditions set out in the enquiry report. On such affiliation the college was run from the beginning of the academic year 1968-69.

4. By an appropriate notification issued u/s 58(4) of the Calcutta University Act, 1966 (hereinafter referred to as the said Act) the State Government brought into force the First Statutes, the First Ordinances and the First Regulations framed by the Vice Chancellor u/s 58 (2) of the said Act with effect from September 18, 1968. Chapter 7 of the First Statutes provides for constitution, powers and functions of the governing bodies of colleges and the tenure of its members. Two Statutes 93 and 100 are relevant for our present purpose and they are set out hereunder :--

"93. (1) Save as otherwise provided in Statute 100 the Governing Body of a 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 Women'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 condition 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 condition 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.

(2) The members of a Governing Body as stated under paragraph (1) shall, at

their first meeting, elect a person as the President of the Governing Body and such President may or may not be elected from amongst such members.

(3) The names of all persons elected or nominated as members or the President of every Governing Body shall be reported by the Principal of the college to the University.

(4) All disputes about the election or nomination of the members or the President of every Governing Body shall be referred to the Syndicate and its decision thereon shall be final.

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.

(2) The provisions of Statutes 94 to 99 shall apply to a college referred to in paragraph (1), in so far as such provisions are not inconsistent, as the case may be, with the terms and conditions of the Trust, the Articles and Memorandum of Association of the Registered Society or the scheme concerned.

5. On October 31, 1968 Sri A.C. Banerjee, the Inspector of Colleges issued a circular to all heads of affiliated colleges including the petitioners' college requesting the college authorities to reconstitute their respective governing bodies in accordance with First Statutes and report the same to the University for approval on or before December 31, 1968. According to the petitioners there having been material mistakes in the original trust deed dated May 17, 1968 and the trustees having met with difficulties in acting upon the same, it was decided to amend the trust deed dated May 17, 1968 (hereinafter referred to as the earlier deed). Further according to the petitioners in furtherance of the said decision by a deed of modification dated September 5, 1968 (hereinafter referred to as the later deed) the earlier trust was amended. It is not in dispute that such amendment was in material particulars including exclusion of certain plots originally conveyed and inclusion of some new plots. That apart, there was material alteration regarding the provision as to the constitution of the governing body. While the earlier deed provided that such governing body should be constituted according to rules and regulations of the University of Calcutta subject only to there being two representatives of the settlors, the later deed provided for a Trust Board which would control, manage and administer the college. Such Board shall consist of ten members, five of whom would be permanent. The permanent members would be two shebais, the settlors or their

successors and three others nominated in the deed itself to be succeeded on their death or relinquishment of office by person or persons to be nominated by the senior shebait. The five non-permanent members are the principal, two representatives of the teachers, two persons interested in education selected by the permanent members. The deed further provided that the permanent members shall have power to co-opt two other members in the interest of the college. This later deed though alleged to have been executed on September 5, 1968 was not registered until December 31, 1968 and there is a serious dispute between the parties on its bona fides and the actual date of its execution. According to the respondents this later deed was executed long after September 18, 1968 when the First Statutes came into effect and was antedated only to defeat the provisions of Statute 93 thereof.

6. On December 31, 1968 the petitioner No. 4 wrote a letter to the University informing it about the amendment of the trust and therewith forwarded a copy of the later deed. On February 25, 1969 Sri A.C. Banerjee, Inspector of Colleges wrote a letter to the college authorities informing them that the later deed was placed before the college committee of the University on January 14, 1969 for consideration when the said committee adopted the following resolution :

1. Resolved that the committee regrets that the trust deed cannot be approved as it was registered on 31-12-1968.
2. That the Secretary be requested to reconstitute the governing body of the college in accordance with First Statute 93 framed under the Calcutta University Act, 1966 without further delay."

The petitioners now before this court however claim that they had no knowledge about this letter which was suppressed by the Principal, respondent No. 5 until the last week of April, 1969.

7. On the basis of the aforesaid letter dated February 25, 1969 of the University the governing body was reconstituted all between the Principal and the President of the existing governing body, respondents 5 and 10 respectively. It was so reconstituted with respondent No. 5, the Principal, respondents 6 and 7 as teachers' representatives and the petitioner No. 2 as the donors' representative. Respondent No. 10 by two letters dated April 25 and May 6, 1969 forwarded the names of the members of the reconstituted governing body to the University and the University on its part on May 13, 1969 nominated respondents 12, 13, and 14 as the University's nominees to the governing body. The governing body so reconstituted was approved by the University on May 26, 1969 and it is claimed that on May 25, 1969 at the first sitting the newly constituted managing committee elected respondent No. 10 to be the President of the committee. The petitioners to this court disown all knowledge of these facts about reconstitution at all material times except a notice to the petitioner No. 2 of the first sitting of the reconstituted managing committee on receipt whereof he lodged a strong protest with the University authorities and then moved this court on May 28,

1969 and obtained the above Rule.

8. On the Writ petition as it now stands on the amendment allowed by this court, the present petitioners are disputing the reconstitution of the governing body effected in the manner set out hereinbefore under the First Statutes on twofold grounds. In the first place, the petitioners claim that they come within the purview of Statute 100 and as such the Trust Board as provided in the later deed should be the governing body and reconstitution of the governing body under Statute 93 is unauthorised. Secondly, it is claimed by them in the alternative that the reconstitution was not made in accordance with Statute 93 but was made irregularly really by the respondent No. 5 to suit his own interest by suppressing material facts from the existing governing body and particularly the petitioners to this court. Strong reliance is placed on a letter dated May 16, 1969 of the respondent No. 10 to the Inspector of Colleges. In this letter the respondent No. 10 clearly acknowledged that the reconstitution was not constitutionally effected by the existing governing body and that his earlier letter dated May 6, 1969 was initiated in an irregular manner. On the claim as aforesaid the petitioners have prayed for an appropriate mandate upon the respondents directing them not to give effect to the disapproval of the trust dated 5-9-1968 as conveyed by the Inspector of Colleges by his memo dated February 25, 1969, not to give effect to the reconstitution dated May 26, 1969 and to accept the deed dated September 5, 1968. There is also a prayer for an appropriate mandate directing the members of the reconstituted governing body to forbear from acting as such.

9. Two sets of the respondents are contesting this Rule. The first set consists of the University, The Vice Chancellor, The Inspector of Colleges and the Deputy Inspector of Colleges being respondents 1 to 4. Two affidavits have been filed on their behalf respectively on September 23, 1970 and April 7, 1971. According to them as already indicated hereinbefore the later deed is not a bona fide one. It was an antedated deed created only for the purpose of avoiding Statute 93 of the First Statutes and as such the University had lawfully rejected the same. They further claim that the University being informed of the reconstitution by the President of the existing governing body under the material clauses of Statute 93 the University forwarded its own nominees to the governing body and the governing body so reconstituted was constituted in accordance with law. In this view the said respondents are strongly contesting the claim of the petitioners.

10. This Rule is being contested by respondents 5, 6, 7, 10, 12 and 13. An affidavit has been filed on their behalf but in substance it reads as an affidavit of respondent No. 5. It has been sworn by the said respondent No. 5 on November 14, 1970. There is a further affidavit by the said respondent no. 5 filed on March 30, 1971. In these affidavits, it is also claimed that the later deed is not a bona fide one. That the reconstitution under Statute 93 was lawfully made. It is, however, not disputed by these respondents that such reconstitution was effected between the Principal and the President, respondents 5 and 10 and not by the existing governing body. Although it is claimed that it was so done to the

knowledge of all the petitioners to this Court, it is however clear that such reconstitution was not sponsored by the existing governing body or its Secretary nor was it approved by such a governing body. On these allegations these respondents too are contesting the claim of the petitioners.

11. Mr. Chakraborty appearing in support of this Rule has first contended that the University authorities misconceived the legal position in not approving the deed of modification dated September 5, 1968 on the ground that it was registered on December 31, 1968. It is only on such misconception the said authorities proceeded to consider that Statute 100 has got no application and that the governing body is to be reconstituted under Statute 93. According to Mr. Chakraborty the University authorities lost sight of the provisions of Section 47 of the Registration Act by virtue of the provisions whereof notwithstanding registration on a later date the said deed is to take effect from the date of its execution viz., September 5, 1968 and thus bring it within the purview of Statute 100. In my view, however, there are two impediments to the acceptance of this contention of Mr. Chakraborty notwithstanding the provisions of Section 47 of the Registration Act.

12. In the first place, under the proviso to Statute 100, if a trust within the meaning of Statute 100 (1) is to be created after commencement of these statutes, the terms and conditions of such trust shall require a prior approval of the Syndicate. Otherwise such a trust does not have the benefit of the said Statute. On the facts of the present case therefore the question that arises for consideration is as to when was the trust created. Even if by virtue of Section 47 of the Registration Act the deed is given a retrospective effect from the date of execution still can it be said to have been created on a retrospective date. In my view Mr. Mukherjee is right in his contention that when both execution and registration are necessary ingredients to the creation of" the trust, the trust is not created until both the requirements are fulfilled. The term "create" in this proviso bears the meaning of bringing into legal existence. For so doing registration is an essential requirement. Therefore, when one registers such a deed and thus completes the creation on a date subsequent to the commencement of these statutes the proviso comes into play and a prior approval of the Syndicate becomes a legal necessity. Section 47 of the Registration Act might give a retrospective effect to the trust but that does not derogate from the position that the trust itself was created on the date it is registered.

13. Incidentally, Mr. Saktinath Mukherjee who followed Mr. Chakraborty to give replies contended with reference to the provisions of the Sections 1 and 5 of the Indian Trusts Act that the endowment being a charitable one no registration whatsoever is at all necessary in the present case. But in my view, this contention is not well founded. It is quite clear on the settlement itself that the settlors transferred immovable properties of the value of more than hundred rupees in favour of named trustees who are to hold it for a specific purpose of

charity. An endowment so created attracts 17 of the Registration Act and the deed does not become operative unless it is registered. This view appears to follow by implication from the decision of this court in the case of Bhupati Nath Chakravarty Vs. Basanta Kumari Devi, .

14. The next difficulty for Mr. Chakraborty lies in the fact that on the pleadings the true date of execution of the deed of modification is seriously disputed. While according to the petitioners it was executed on September 5, 1968, according to the respondents it was not executed till after September 18, 1968 but was antedated in order to defeat the provisions of Statute 93- In my view, such a dispute cannot appropriately be decided in a summary proceeding like the present one and on the materials now before me. While to support their own case the petitioners rely on the document and an affidavit in support thereof, the respondents on the other hand, refer to certain circumstances including some intrinsic to the document itself which may raise a strong suspicion that the document was not executed on the date it bears. My attention has been drawn to the fact that this deed of modification was executed on a stamped paper purchased by one Tarapada Sur on February 6, 1968 i.e. on a date even prior to the original deed. Next my attention has been drawn to the admitted position that notwithstanding the circular of the University dated October 31. 1968 this deed of modification was not brought to the notice of the University authorities on any date prior to December 31, 1968. Inordinate and unexplained delay in the matter of registration had also been a matter of adverse comments by the learned Advocates for the respondents. Petitioners' claim that later deed was duly acted upon by the parties since September 1968 has strongly been denied by the respondents and there is no evidence of its corroboration; as pointed out earlier such deed was not disclosed to the University or its authorities before 31-12-1968 and there is no evidence that the University ever accepted such a deed or acted upon its terms. No doubt my attention has been drawn by Mr. Chakraborty to two resolutions dated July, 6, 1968 and September 15, 1968 made annexures "A" and "B" to the affidavit-in-reply filed on February 18, 1971 but I am unable to place any reliance upon those two documents as, in my view, on the importance of these documents they ought to have been disclosed in the original petition and not in the affidavit-in-reply. On this evidence only and in view of the complicated nature of dispute raised on facts it is not possible for me in this summary proceeding to find out what is the true date of execution of this deed of modification. As Mr. Chakraborty's contention rests entirely on an assumption that this deed was executed on a date prior to September 18, 1968 but registered on later date and when on my findings made hereinbefore there is no solid foundation for such an assumption. Mr. Chakraborty cannot succeed in this contention of his even on the provisions of Section 47 of the Registration Act. On these conclusions I must overrule the first contention raised by Mr. Chakraborty in support of this Rule.

15. The next contention of Mr. Chakraborty is to the effect that assuming that Statute 93 applies even then the reconstitution is not in accordance with the said

Statute. According to Mr. Chakraborty the reconstitution should not have been effected by respondent No. 5 alone in collaboration with respondent No. 10 without the knowledge and concurrence of the existing governing body or the Secretary thereof. He has further submitted with reference to the statements set out in paragraph 24-A of the petition that there was no proper or bona fide election of teachers' representatives or donors' representative and that there had been no government nominee to the governing body. Much of the facts set out in the petition to support the aforesaid alleged irregularities in the reconstitution have been seriously disputed by respondent No. 5 in his affidavit. Strangely however the respondent. No. 10 had not filed any affidavit to deny an admission of his own in the letter dated May 16, 1969 made annexure "G" to the petition to the effect that the reconstitution was not effected in a regular manner. This letter dated May, 16, 1969 which is not denied or controverted by the author thereof was described by the Registrar of the University in his affidavit as "manufactured for the purpose of creating false evidence." Such is also the claim of respondent No. 5. I, however, agree with Mr. Chakraborty that such a statement on the part of a responsible officer of the University is highly irresponsible when it is clearly admitted by the learned Counsel for the University that the original of the said document was found in the relevant file from the custody of the University itself in course of inspection of documents. Furthermore, upon the admitted facts of the present case there had been clear infringement of Statute 93 (1) (e) when the member required to be included in the governing body under the terms and conditions of even the first donation of the earlier deed had not been brought into the governing body.

16. But notwithstanding these facts I must uphold the contention of Mr. Kar who is appearing on behalf of the University that any dispute of the present nature should not be gone into in this proceeding at this stage in view of the provisions of Statute 93 (4) of the First Statutes referred to hereinbefore. According to Mr. Kar the dispute raised by Mr. Chakraborty in this regard is a dispute about the election or nomination of members to the governing body which should first be referred to the Syndicate for adjudication, and should not be taken up by this Court in this jurisdiction. Statute 93 (4) on its terms well supports this contention of Mr. Kar. But Mr. Chakraborty strongly contends that a statutory regulation like Statute 93 (4) cannot take away or abridge the jurisdiction conferred on this Court by Article 226 of the Constitution so that notwithstanding the aforesaid provision relied on by Mr. Kar this court can go into and adjudicate in a Writ proceeding as to whether an election or nomination of members to a governing body had lawfully been made in accordance with the Statute or the regulations made thereunder.

17. In my view, there may not be any dispute on the principle that no statute can impose any restriction or abridge the jurisdiction conferred on this court by the constitution. But a statute without excluding such a jurisdiction can provide for regulation for the enforcement of rights or obligations created by such statute. It is well settled that where a right or liability is created by a statute

which gives a special remedy for its enforcement the remedy provided by the statute only must be availed of. This Rule which was originally laid down by Willes J. in *Wolverhampton New Water Works Co. v. Hawkesford* (1859) 6. C. B. (N. S.) 336 and was approved by the House of Lords in *Neville v London Express News Paper Ltd.*, (1919) AC 368, by the Privy Council in *Attorney General of Trinidad and Tabago v. Gordon Grant and Co.* (1935) AC 532 and by the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, . It is no doubt true that in the case of *N. P. Poonnuswamy* the Supreme Court on the provisions of Article 329(b) held that the jurisdiction of the High Court was excluded but the decision did not rest entirely on the exclusion of the jurisdiction itself. On the other hand, the Supreme Court approved an earlier decision of this court in the case of *Hurdutrai v. Official Assignee of Calcutta*, 52 Cal WN 343. In that case the question which arose for consideration was as to whether Sections 96 and 56 of the Presidency Town Insolvency Act excluded the jurisdiction of the Ordinary Civil Court or not and whether matters coming within the purview of the said provisions should be left to the Insolvency Court or not. In considering the said issue Mukherjee J, observed, "we are inclined to hold that Ordinary Civil Courts have concurrent jurisdiction in matters coming under Sections 55 and 56 of the Presidency Town Insolvency Act though they can decline to exercise such jurisdiction on grounds of expediency and refer the assignee to the Insolvency Court." Therefore, the pertinent question is not one as to whether the jurisdiction of this court is excluded or not but whether on the ground of expediency the parties should be made to seek remedy provided by the Statute or the statutory regulation the rights and obligations whereunder are sought to be enforced. Now in the present case the rights and obligations relate to election to a governing body of an educational institution affiliated to the University itself. The University itself would be expected to be better conversant with the affairs of institution under its administrative control. So also the requirements of the regulations with reference to the facts relating to each institution. The regulation itself provides that all disputes relating to such election should properly be adjudicated by the Syndicate. That being the position, in my view, there can be no doubt that the most expedient manner in which such disputes are to be adjudicated is by availing the remedy provided by the regulation and not by substituting a proceeding under Article 226 of the Constitution for the remedy so provided. That also appears to be the intention of the regulation itself on my reading. In this view I find ample support for the contention of Mr. Kar that in view of the provisions of Statute 93 (4) this court should not go into a dispute as raised by Mr. Chakraborty but should on the other hand, relegate the parties to seek appropriate remedy from the Syndicate itself. On the conclusions as above I must overrule the second contention raised by Mr. Chakraborty.

18. As both the contentions raised in support of this Rule fail the application fails and the Rule is discharged.

19. There will be no order for costs.

20. As the Rule is discharged, all interim orders are vacated.