
(1995) 05 CAL CK 0030
In the Calcutta High Court
Case No : C.O. No. 17107 (W) of 1994

Gour Sankar Pani and others

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 27
West Bengal Secondary Education Act, 1950 — Section 10, 38

Citation : AIR 1996 Cal 13 : 100 CWN 275

Hon'ble Judges : Samaresh Banerjea, J

Bench : Single Bench

Advocate : Mr. Milan Bhattacharjee, for the Appellant; Asit Goswami, Tulsi Das Maiti and Anadi Banerjee, Bikash Ranjan Bhattacharjee and Mr. A.B. Chatterjee, Keshab Chatterjee, L.C. Behani, R.L. Moitra, Sk. Ali Md., for the Respondent

Judgement

1. Three teachers and one non-teaching employee of Gobra I.N.K.M. High School in the District of Midnapore who contested the election of teaching and non-teaching category of the school jointly have moved the instant writ application inter alia for issue of writ in the nature of mandamus commanding the respondents particularly the respondent No. 5 to reconstitute the new Managing Committee within December, 1994 after complying with necessary formalities, and also for direction upon the existing Managing Committee to hand over the charge to the newly constituted Managing Committee. A prayer for interim order was also made to the effect directing the respondent No. 5 to hold election of teaching and non-teaching category on or before 10-10-94.

2. The case of the writ petitioners in the writ petition inter alia was that the tenure of the existing committee was due to expire on 31-12-94. As per the direction of the West Bengal Board of Secondary Education, the school authorities prepared the election programme for the purpose of holding "Guardians" election which was scheduled to be held on 25-9-94 and the same was held on the said date and the results were declared. Before holding of such

election, the teacher in-charge issued notice fixing date of election of teaching and non-teaching category on 14-9-94. On the date of election of teaching and non-teaching category ballots were issued and at the time of verification of the ballots it was found that some ballots were not signed by the teacher in-charge. The voters present received ballots after signing the counterfoils as such they requested the teacher in-charge to proceed with the election. Ultimately voters cast their votes and thereafter counting was started but one teacher objected to declaring the results of such poll. At that time there was serious commotion and the Presiding Officer was directed by the contesting candidate not to declare the result of such election. Ultimately the Presiding Officer proposed to refer the matter before the Assistant Inspector of School (S.E.), Contai and he did so by a letter dated 19-9-94. Subsequently, on 20-9-94 after having a discussion the Assistant Inspector of Schools (W.E.), Contai verbally instructed the Presiding Officer to issue a notice for fresh election, accordingly the Presiding Officer issued a notice dated 21-9-94 for re-election of the teaching and non-teaching category and the same was fixed on 24-9-94 after cancelling the voting which was held on 14-9-94. But nine teaching and non-teaching staffs out of 35 refused to acknowledge such notice for election by signing who are contesting in such category for the obvious purpose of the postponement of the election and to create an administrative vacuum in the school after the expiry of the tenure of the existing Managing Committee. Under such a situation the respondent No. 5 being the teacher in-charge declined to hold the election on 25-9-94 on the ground that the said teaching and non-teaching staffs had refused to sign the said notice, in spite of repeated requests of others to hold such election as the life-term of the Managing Committee will expire on 31-12-94. The teacher in-charge issued a notice dated 24-9-94 postponing the election until further decision.

3. It is the contention of the writ petitioners that the teacher in-charge ought to have held the election of teaching and non-teaching category on the scheduled date as reconstitution of the Managing Committee was required to be made on 30-9-94. Therefore, the respondent No. 5 could not have postponed the election only on the ground that some staffs have refused to sign the notice for re-election.

4. The petitioners accordingly, moved the instant writ application praying for the above mentioned reliefs.

5. On October 3, 1994, C.O. No. 17107 (W) of 1994 was issued by Altamas Kabir, J. granting an interim order directing the Presiding Officer to hold election for the teaching and non-teaching category prior to 10-10-94. It was further directed by the said interim order no steps would be taken for election of the office bearers of the Managing Committee without the leave of the Court. On 23rd December, 1994 his Lordship was pleased to grant further interim order directing that the status quo with regard to the management of the institution continue in the meantime. On 10th January, 1994 the matter was heard by Tarun Chatterjee, J.

and after hearing the parties his Lordship was pleased to allow the application made by one Jagatjyoti Jana and three others to be added as respondents and extended the interim order already granted for a further period of three weeks. The application filed on the said date for vacating the interim order by the added respondents was also directed to be listed. On 3rd February, 1994 his Lordship was further pleased to extend the interim order already granted till 24-2-95 in presence of learned Advocates of all the parties.

6. Such interim order was further extended by G. R. Bhattacharjee, J. by an order dated 24-2-95 for a period of three weeks from date. On 14-3-95 the matter was heard by S. B. Sinha, J. when the writ petitioners filed a supplementary affidavit affirmed on 14th March, 1995. On the said date before S. B. Sinha, J. Mr. Tulsi Das Maiti, learned Advocate representing the Ad hoc Committee claimed that the Board in the meantime has appointed an Ad hoc Committee and the Ad hoc Committee of the school has taken charge which was disputed by the writ petitioners and reliance was placed by the writ petitioners upon a General Circular of the Board dated 29-12-94 extending the life-time of all the Managing Committee up to 30th June, 1995. The writ petitioner drew the attention of the Court on the said date that pursuant to the order of Altamas Kabir, J. that the election of teaching and non-teaching category had already been held on 8th October, 1994 and a request has also been made to the District Inspector of Schools to place the departmental nominee.

7. After hearing all the parties on the said date, as his Lordship was of the view that it was difficult for the Court to come to a conclusion as to whether the affairs of the school is being managed by the Ad hoc Committee or by the erstwhile Managing Committee, the Court expressed its desire that the constitution of the Managing Committee and the election of the office bearers should be completed soon as to resolve the impasse. A direction for affidavits was given on the said date on the writ application as also on the supplementary affidavit and the interim order of status quo was extended for further period of two weeks.

8. The matter thereafter came before me for consideration of the question of extension of interim order as also the application for vacating interim order made by Jagatjyoti Jana and others. At that stage, there was a serious dispute between the writ petitioners and the Ad hoc Committee relating to the question who is in-charge of the school. While the writ petitioners claimed that the Managing Committee is in-charge and Ad hoc Committee attempted forcibly to take charge of school, such allegations were denied by the Ad hoc Committee and it was claimed that Ad hoc Committee is in-charge of the school. Mr. Tulsi Das Maiti appearing for the Ad hoc Committee prayed for an opportunity to file affidavit and such prayer was allowed permitting the said Committee to file affidavit by 31st March, 1995 and reply, if any, one week thereafter. No other respondents however, filed affidavits in spite of the directions passed by S. B. Sinha, J. on 14-3-95. The matter accordingly was fixed on 10-4-95 along with the application for vacating interim order and application for addition of parties made by

majority of the teaching and non-teaching staffs.

9. The matter thereafter, was taken up by this Court on 13-4-95 when all the parties agreed that because of such dispute as to who is in-charge of the school, the teaching and non-teaching staffs are not paid and the writ petition itself along with the vacating application should be finally disposed of without filing any farther affidavits. Accordingly, all the parties addressed the Court at length on merits.

10. Before going into the merits of the case it will be however convenient to set out certain relevant admitted facts for the purpose of better understanding of the issues which are now before this Court for determination, which will appear either from pleading or affidavits of the parties or original documents produced before this Court.

11. Although the writ petitioners came before this Court at a stage when after completion of the election in the Guardians" category, holding of election of teaching and non-teaching category was postponed by the Presiding Officer, Altamas Kabir, J. by an order dated 3rd October, 1994 passed an interim order directing the respondent No. 5, the Presiding Officer to hold elections for the teaching and non-teaching category on or before 10th October, 1994 and in terms of such order election of such teaching and non-teaching category was held on 8th October, 1994 and the result has also been declared. After such election, records were communicated to District Inspector of Schools on 10th October, 1994 for placement of departmental nominee. But admittedly, no nominee has been placed nor any decision has been disclosed for not placement of the departmental nominee. Panchayat nominee has already been placed on 7th November, 1994 pursuant to teacher in-charge memo No. 266 dated 8-9-94. Both the categories of such election namely Guardians" category and teaching and non-teaching category having been completed, only thing which now remains for completion of reconstitution of the Managing Committee is the office bearers" election after placement of the departmental nominee. By Circular being No. S/421 dated 29-12-94 of West Bengal Board of Secondary Education the tenure of the Managing Committee of all schools has been extended up to 30th June, 1995 or till completion of election of the office bearers or until further order whichever is earlier subject to certain conditions laid down in the memo. According to the writ petitioners as admittedly the life-term of the Managing Committee which was till 31st December, 1994 now stands extended by aforesaid Circular dated 29-12-94 up to 30th June, 1995 and in such view of the matter coupled with the fact that only thing which is now left is office bearers" election, this Court should pass appropriate direction for completion of such election after placement of the departmental nominee. The contention of the West Bengal Board of Secondary Education and other respondents opposing the writ application inter alia is that the said Circular is not applicable to the school in question and the school having lost its tenure already after expiry of 31st December, 1994 has no right to continue even for a day as it has become

functioning *officio* and therefore they cannot complete the process of election.

12. By an order dated 2nd March, 1995 being No. S/107 the President of the West Bengal Board of Secondary Education in exercise of his emergency power appointed an Ad hoc Committee in the school in question and it is now claimed by the Ad hoc Committee of which said Jagatjyoti Jana is also a member that the Ad hoc Committee has taken over a charge of the school, which is functioning. It is contended by the Ad hoc Committee as also other respondents that in view of appointment of such Ad hoc Committee, and assumption of charge of the school, the writ petitioners are not entitled to any relief in the instant writ application and erstwhile Managing Committee cannot be permitted to complete the election process and it is now for the Ad hoc Committee to do so in terms of the order passed by the President of the West Bengal Board of Secondary Education.

13. It will thus appear from the above-mentioned facts that in deciding the merits of the contention of the writ petitioners that the process of reconstitution of the Managing Committee should be allowed to be completed, only office bearers' election remaining after appointment of departmental nominee, no adjudication in respect thereof can perhaps be made without taking note of the aforesaid subsequent event, namely appointment of Ad hoc Committee by the President of the West Bengal Board of Secondary Education by exercising his emergency power on 2nd March, 1995 and the claim of the Ad hoc Committee that they are in charge of the school.

14. The rival contention of the parties on this aspect of the matter may be referred to in brief.

15. The writ petitioners' contention is in fitness of things the Court should allow the completion of the process of reconstitution of Managing Committee so that the democratically elected body may function; election to both the categories having already been completed, there cannot be any reasonable justification why the remaining process namely office bearers' election after appointment of departmental nominee will not be completed. It is also the contention of the writ petitioners that there is no impediment in permitting the erstwhile Managing Committee to complete such process of reconstitution inasmuch as tenure of the previous Managing Committee which was admittedly till 31st December, 1994 stand extended by the General Circular being No. S/421 dated 29-12-94 till 30th June, 1995. The provisions contained in the said General Circular dated 29-12-94 are very much applicable to the school in question. As to the appointment of Ad hoc Committee it has been contended by Mr. Bhattacharjee that Altamas Kabir, J. by an order dated 3rd October, 1994 having granted an interim order directing status quo which was extended from time to time and being still subsisting, the appointment of the Ad hoc Committee by an order dated 2nd March, 1995 was in gross violation of the aforesaid interim order of the Court and therefore such order is a null and void and cannot be given effect to. It is his further contention that the interim order passed by Altamas Kabir, J. from time to time was communicated to the respondents including the West Bengal Board of

Secondary Education "under certificate of posting" and sometime under "Registered Post" and accordingly there is a presumption of service of such letter upon the West Bengal Board of Secondary Education. It is his further contention that in any event admittedly Jagat-jyoti Jana having been made a member of the Ad hoc Committee and he being the respondent in the writ petition and having participated in the proceeding through his learned Advocate throughout was very much aware of the interim order granted by this Court directing maintenance of status quo and therefore any attempt of the Ad hoc Committee to take possession was in violation of the said order and, therefore, all actions taken in violation of such interim order are nullity. It is also contended on behalf of the writ petitioners that the order appointing the Ad hoc Committee is ex facie bad inasmuch as it will appear from the said order such Ad hoc Committee was appointed by the President of the Board in purported exercise of his emergency power on the grounds that after the expiry of the power of the Managing Committee of school on 31st December, 1994, no requests came from the school for extension of the life-term of the Managing Committee for reconstitution of the Managing Committee for which there is an administrative vacuum and accordingly it has become necessary to appoint Ad hoc Committee for a period of one year for the purpose of proper administration of the school. Firstly, it is contended by the petitioner in the supplementary affidavit, which was filed on 14-3-95 that after the Guardians' election was held on 25-9-94, Panchayat nominee was placed on 7-11-94 after the election of teaching and non-teaching category, was held on 8-10-94 pursuant to the order of the High Court dated 3-10-94 the records were duly sent to the District Inspector of Schools, Midnapore on 10-10-94 with a prayer for placement of departmental nominee. On 12-12-94 the school authorities wrote to the West Bengal Board of Secondary Education for extension of life of the Managing Committee which has not been denied by the West Bengal Board of Secondary Education by filing any affidavit. It has also been further contended on behalf of the petitioners that in any event the order appointing Ad hoc Committee is ex facie bad as it proceeded on the footing that the lifetime of the Managing Committee has expired on 31-12-94, although admittedly by a General Circular of the Board being No. S/421 dated 29-12-94 the lifetime of all the Managing Committees including the Managing Committee of the instant school was extended up to 30th June, 1995 with a direction to complete the process of election by 30th April, 1995, and therefore, the same cannot stand in the way of permitting the Managing Committee to complete the election process. The writ petitioners have also denied that the charge of the school has been taken either by the Ad hoc Committee seriously contending that the members of the Ad hoc Committee took away the key of the school and other documents forcibly and in any event in view of the fact the same was in violation of interim order granted by this Court, the same is a nullity and cannot be given effect to.

16. The contention of the writ petitioner is supported by Mr. Bikash Ranjan Bhatta-charjee, learned Advocate appearing for another set of added

respondents representing the majority of the teaching and non-teaching staffs of the school. Mr. Bhatta-charjee represents 16 teaching and non-teaching staffs of the school. Their contention is also that the process of reconstitution should be allowed to be completed by this Court and there is no impediment in respect thereof as the life-time of the Managing Committee has been extended by General Circular and the order of appointment of the Ad hoc Committee is bad. Mr. Bhattacharjee has further submitted that in a matter like this it should be the endeavour of the Court to give effect to the democratic process and the matter should be decided expeditiously inasmuch as because of the dispute between the Managing Committee and Ad hoc Committee teaching and non-teaching staffs are not being paid and suffering serious prejudice. Mr. Lakshmi Behani, learned Advocate appearing for the Secretary of the school also fully supports the contention of the writ petitioners as also the added respondents representing by Mr. Bikash Ranjan Bhattacharjee. Mr. Keshab Bhattacharjee appearing for the teacher in charge against whom certain allegations have been made by the writ petitioners being in collusion with the Ad hoc Committee also supports the contention of the writ petitioners and the said added respondents that the election process should be allowed to be completed by the Managing Committee. He, however, disputes the allegations made against him that he is in collusion with the Ad hoc Committee and supports the allegations of the writ petitioners and the added respondents representing by Mr. Bikash Ranjan Bhattacharjee that the Ad hoc Committee members took the possession with key and certain records forcibly for which he lodged a complaint before police.

17. Mr. A. B. Chatterjee learned Advocate appearing for the other added respondents namely three Assistant Teachers and one non-teaching staff of the school viz. Jagatjyoti Jana, Atanka Bhajan Kar, Anadi Kumar Prodhan and Rajani Kanta Shu, however strongly opposes the writ application and prays for its dismissal firstly on the ground that the Managing Committee having lost its tenure after expiry of 31st December, 1994 has become functus officio and therefore, does not have the right to continue even for a day and consequentially such a defunct Committee cannot be permitted to complete the process of the election particularly in view of the fact that the Ad hoc Committee Has now been appointed for the aforesaid purpose and has also been taken over charge of the school. Mr. Chatterjee further contends that such a Managing Committee should not be permitted to complete the process of election also because of the fact that complaint was lodged to the District Inspector of Schools and to the West Bengal Board of Secondary Education about the serious irregularities committed in the election held in the Guardians" constituency on 25-9-94 and also teaching and non-teaching constituency on 14-9-94 and on 8-10-94 and the same are now pending for the adjudication of the Board as disputes relating to election are required to be referred to the West Bengal Board of Secondary Education under the rules.

18. Mr. Asit Goswami and Mr. Tulsi Das Maiti appearing for the Ad hoc Committee also oppose the prayer of the writ petitioners on the ground that Ad hoc

Committee now having been appointed by the Board and the Ad hoc Committee also having taken charge of the school it is now for the Ad hoc Committee to take steps for reconstitution of the Managing Committee, the erstwhile Managing Committee having been superseded by the Board. The allegations of forcible taking over charge of the school are denied and the affidavit-in-opposition which has been filed by Ad hoc Committee a number of documents have been annexed wherefrom it will appear that in presence of the teacher in charge of the school apparently the charge of the school was taken. Mr. Rabilal Moitra, learned Advocate appearing for the West Bengal Board of Secondary Education although has not filed any affidavit, has produced original records relating to formation of Ad hoc Committee. In support of formation of the Ad hoc Committee it has been submitted by Mr. Moitra such order was not in violation of the interim order granted by the Hon'ble High Court inasmuch as the order of status quo granted by Altamas Kabir, J. which was purportedly communicated was never received by the Board and such communication was received only subsequent to the passing of the order by the President of the West Bengal Board of Secondary Education appointing the Ad hoc Committee. It is the further contention of Mr. Moitra that General Circular of the Board being No. S/421 dated 29-12-94 is not applicable in the instant case inasmuch as the extension of the lifetime of the Managing Committee and the said Circular was made subject to certain conditions as it will appear from the said Circular itself and in any event the provisions of the said Circular will not apply because of the specific condition that in case of contrary order of Hon'ble Court, the Circular will not apply; in the instant case there being contrary order of Kabir, J. directing not to hold office bearers' election without the leave of the Court, the provisions of the said Circular would not be applicable and, therefore, the lifetime of the Managing Committee has expired on 31st December, 1994.

19. The question, therefore, which has now come up for consideration before this Court is whether the Managing Committee of the school should be permitted to complete the process of election under the facts and circumstances of this case and particularly in view of the subsequent events which have taken place during the pendency of the writ petition namely appointment of Ad hoc Committee and the claim of the respondents that the Ad hoc Committee has taken charge of the school.

20. Under the relevant Management rules every Managing Committee is required to be reconstituted within the prescribed period, which is a right of the Managing Committee and the process of reconstitution is required to be initiated by every Managing Committee before the expiry of its tenure, so that there is no administrative deadlock and there is smooth transferring of charge of the school to the newly reconstituted Managing Committee by the outgoing Managing Committee. In the instant case, admittedly the lifetime of the Managing Committee was till December 11, 1994. But by virtue of the General Circular of the Board being No. S/421 dated 8th June, 1994 which extended the tenure of the Managing Committee of all schools in West Bengal up to 31st December,

1994 or till completion of the election whichever is earlier, the lifetime of the Managing Committee of the instant school also stood extended till 31st December, 1994. The fact that the lifetime of the Managing Committee of the school was up to 31-12-94 is not disputed by the West Bengal Board of Secondary Education as it will appear from the order appointing the Ad hoc Committee by the President of the Board when the President proceeded on the footing that the lifetime of the Managing Committee was till 31-12-94. Admittedly the process of election was started by the Managing Committee of the school well ahead of the expiry of its tenure and election for Guardians" category was held on 25-9-94. The election of the teaching and non-teaching category which was scheduled to be held on 14-9-94 however could not be held as objections were raised by some persons about non-signing of some ballot papers by the teacher in charge, because of which commotion followed and the teacher in charge did not declare the result of the election which was held on 14-9-94. Thereafter, although the teacher in charge after having discussion with the Assistant Inspector, Schools on 20th September, 1994 issued a fresh notice fixing 24-9-94 as the date for holding election of the teaching and non-teaching category on the basis of nomination papers previously declared valid, the teacher in charge did not hold such election as nine teaching and non-teaching staffs refused to acknowledge the notice of such election by putting their signature therein. As the teacher in charge did not hold such election but by a notice dated 24-9-94 postponed the election until further decision, the present writ petitioners who are contesting in the teaching and non-teaching category of the school moved the instant writ application, inter alia, praying for issue of writ in the nature of mandamus commanding the respondents particularly the respondent No. 5 to reconstitute the new Managing Committee within December, 1994 after complying with necessary formalities whereupon on 3rd October, 1994 and the Hon"ble Justice Altamas Kabir was pleased to direct the respondent No. 5 to hold the election of teaching and non-teaching category on or before 10-10-94 in terms of the prayer, but not to hold office bearers" election. Pursuant to the said order of Justice Kabir, election of teaching and non-teaching category was held on 8th October, 1994; records were duly communicated to the District Inspector of schools on 10-10-94 for placement of departmental nominee which however was not placed, but the Panchayat nominee was placed on 7th November, 1994. That because of the aforesaid election under the order of the Court in the teaching and non-teaching category on 8-10-94 whether there was irregularity or not in the election which was held in the teaching and non-teaching category on 14-9-94, the result of which was never declared, has become purely academic. The only process which is, therefore, left for completion of the reconstitution of the Managing Committee is holding of the office bearers" election after placement of the departmental nominee.

21. Such being the position, after considering all aspects of the matter including the rival submissions of the parties I do not find any justification in not permitting the Managing Committee to complete such process of reconstitution

by holding the office bearers" election, particularly, when I am of the view that there is no impediment to such right of the Managing Committee to complete such process of election, for the reasons stated hereinafter.

22. The contention of the respondents that the Managing Committee cannot be permitted to hold such election as it has lost its lifeterm and, therefore, it has become *functus officio* is wholly misconceived. As pointed out hereinbefore admittedly the lifetime of the Managing Committee was till 31 -12-94. Before the expiry of 31st December, 1994 apart from the fact that the Managing Committee has been permitted to continue to administer the school by virtue of the interim order dated 3-10-94 of Altamas Kabir, J. on 29-12-94 the lifetime of the Managing Committee has stood extended till 30th June, 1995 by virtue of the provisions laid down in the Circular being No. S/421 dated 29-12-94 of the Secretary of the West Bengal Board of Secondary Education whereby the tenure of the Managing Committee of all schools in West Bengal have been extended till 30th June, 1995.

23. The contention of the respondents that the provisions of the said Circular is not applicable in the instant case is also not tenable. It will appear from Clause I of the said Circular that the tenures of the Managing Committee/Ad hoc Committee/Organising Committee/Administrator of all the schools have been extended up to 30th June, 1995 or till completion of election of office bearers or until further order whichever is earlier. It is no doubt true, that such extension has been made in the said Circular subject to the provisions laid down in sub-clauses (a), (b) and (c) therein. But a reading of Clause 1 along with sub-clauses (a), (b) and (c) does not support the claim of the respondents that a reading of such sub-clauses will indicate that the provisions of the said Circular is not applicable in the instant case. The aforesaid sub-clauses to which extension of the tenure of the Managing Committee has been made up to 30th June, 1995 really did not exclude any Managing Committee from the purview of extension made in Clause 1 but really put some obligations upon the Managing Committee whose lifetime are so extended to 30th June, 1995 to complete the process of election and office bearers" election by 30th April, 1995 making it clear there will be no further extension beyond 30th June, 1995. In case of Managing Committee whose lifetime has stood extended up to 30th June, 1995 by the aforesaid Circular where stages of election for constitution/ reconstitution of the Managing Committee have already been held prior to the date of issue of this Circular, it will be obligatory for such Managing Committee to complete its office bearers" election as per rules (clause a). In case of schools the terms of whose Managing Committee was not extended in terms of Circular No. S/347 dated 13-10-93. S/439 dated 3-1-94 and S/192 dated 8-6-94 will not be considered for extension of term under this Circular unless they submit election programme drawn as per rules for taking advantage of extension of lifeterm of the Managing Committee up to 30th June, 1995 under the Circular dated 29-12-94 (clause b). In case of other schools the terms of whose Managing Committee has been extended, but they have not held election for constitution/reconstitution prior to the date of

issue of the Circular, their also the lifeterm is extended till 30th June, 1995 (clause c). But the schools are put under an obligation that the Managing Committee must take steps for reconstitution in accordance with rules positively within 30th April, 1995.

24. In the instant case, admittedly different stages of election having already been held prior to December 29, 1994 which is the date of issue of the present Circular being No.S/421, the lifetime of the Managing Committee has been stood extended till 30th June, 1995; although under sub-clause (a) it is now obliged to complete the election of office bearers of the Committee, if there is contrary order of the Court.

25. Not only, therefore, the lifetime of the Managing Committee of the school has stood extended till 30th June, 1995 by the aforesaid Circular, therefore, it has got every right to complete the reconstitution of the Managing. Committee which it is also obliged under sub-clause (a) of the aforesaid Circular to complete the election of office bearers which, however, is unable to do so because of the interim order and non-placement of the departmental nominee. In fitness of things, therefore, the Managing Committee should be permitted to complete the office bearers" election after placement of the departmental nominee without any further delay.

26. It has also been submitted by Mr. Rabilal Moitra, learned Advocate appearing for the West Bengal Board of Secondary Education that the provisions of the Circular being No. S/421 dated 29-12-94 is not applicable in the instant case, as clause 2 of the said Circular specifically provided the said Circular will not be applicable in respect of those schools where contrary order from Hon"ble Court prevails. It is contended since there is an order passed by Altamas Kabir, J. not to hold the office bearers" election until further orders, the same being contrary order from Hon"ble High Court the provision of the said Circular is not applicable.

27. I am, however, unable to accept the contention of Mr. Moitra. Such submission, in my view, emanates from the wrong interpretation of the said Circular and particularly clause 2 thereof.

28. To understand the meaning and scope of Clause 2 of the said Circular the same has to be read as a whole along with entire Circular and not independently torn out of context.

29. As pointed out hereinbefore a reading of sub-clauses (a), (b) and (c) of the Clause 1 and the same clearly indicates the lifetime of all Managing Committees of all schools were extended up to 30th June, 1995 although the said sub-clauses put some obligations upon the Managing Committee the lifetime of whom stand so extended by the said Circular. Because of the provision of the said Circular not only the lifetime of all the Managing Committees stand extended till 30th June, 1995 the Managing Committees are under further obligation to complete all elections within 30th April, 1995.

30. But clause 2 of the said Circular makes a reservation in case of such school where because of litigation before Hon"ble High Court any order prevails either directing the school to complete the election before 30th April, arid June, 1995 or permitting any Managing Committee to continue even beyond that date and to hold election subsequent to 30th April, 1995 or even 30th June, 1995. There are instances gallore when in any writ proceedings before the High Court-under Article 226 of the Constitution or otherwise the High Court directs the Managing Committee of school to complete the process of reconstitutJon within a particular date and to hand over charge to incoming Managing Committee and for the aforesaid purpose permitting Managing Committee to continue even after expiry of its tenure either by an interim order or by a final order. Obviously to deal with such situations clause 2 has been enacted, so that in case of conflict between the order of the High Court and the said Circular relating to extension of tenure and completion of reconstitution, High Court's order will prevail,

31. The aforesaid clause 2 of the said Circular, therefore, certainly does not stand in the way of application of the provision of the said Circular in the instant case. No direction has been passed in the instant proceeding till date to complete office bearers" election by a particular date.

32. But even assuming the order passed by Altamas Kabir, J. directing the Managing Committee to hold the election of the office bearers until further order is treated as a contrary order within the meaning of aforesaid clause 2 of the said Circular, even then it cannot be said that the Managing Committee has become functus officio as there is also an interim order permitting. Managing Committee to continue.

33. It has been contended by Mr. A. B. Chatterjee, learned Counsel appearing for the added respondents namely Jagatjyoti Jana and others that as a dispute.has been raised relating to election of Guardians and teaching and non-teaching category before the West Bengal Board, the present Managing Com- "'''' mittee cannot be permitted to hold the office bearers* election (sic) and to complete the reconstitution till decision of such election dispute. Mr. Chatterjee, in this connection draws the attention of the Court to Rule 34 of the procedure for holding election for the pur pose of constitution/reconstitution of the Managing Committee and non-Government institutions, which provide that in case of any doubt and dispute in the matter of holding election at any stage the matter shall be referred to the Board whose decision thereon shall be final.

34. No affidavit, however, has been filed by the clients of Mr. Chatterjee contending that any such dispute has been raised in respect of holding an election incorporating relevant documents therein. Certain docu ments, however, have been produced before this Court by Mr. Chatterjee wherefrom it appears that certain dispute has been raised by his clients in respect of holding of the election to Guardians" category as also relat ing to election of teaching and non-teaching category on 14-9-94 the result of which was never published, before District Inspector of Schools with copy of the West Bengal Board . of Secondary

Education. In course of hearing further documents were produced by Mr. Chatterjee wherefrom it apparently appears that dispute has been raised even in respect of another election of teaching and non-teaching category which has been held under the order of the Court on 8-10-94. Genuineness of these documents have been seriously challenged by the writ petitioners.

35. It, however, appears from the original records produced by the West Bengal Board of Secondary Education that in the said record there is a complaint dated 30-9-94 made by Nandulal Patra, Sudhangshu Sekhar Jana, Amol Kanti Mali, Gobinda Nath Chandra jointly raising certain dispute as to the election of Guardians" category held" on 25-9-94 mainly relating to alleged irregularity in the preparation of "voters" list. From such record it appears there is another complaint dated 30-9-94 made by Jagatjyoti Jana along with Anadi Kumar Prodhan and Atanka Bhajan Kar as to the irregularity of holding an election of teaching and non-teaching category on 14-9-94 the result of which was not declared, but not addressed to the West Bengal Board of Secondary Education but to the Assistant Inspector of Schools. There is another complaint made to the Assistant Inspector of Schools dated 21-10-94, by Jagatjyoti Jana and others as to the holding of election under the Court's order on 8-10-94 on the ground that no seven days" notice was issued. There is nothing in the record to show how the last two complaints made to the Assistant Inspector of Schools were treated as reference of election dispute of the West Bengal Board of Secondary Education under Rule 34 of the aforesaid procedure of election.

36. Even assuming such complaints are reference of election disputes, raised in respect of such election, made to the West Bengal Board of Secondary Education, admittedly there has been no adjudication of the Board on such complaints and no order has been passed by the West Bengal Board of Secondary Education cancelling the election on the basis of any adjudication after giving hearing to all interested parties. Mr. Moitra appearing for the Board also admits that although such complaint has been made, no adjudication has been on the same.

37. Under such circumstances mere raising of some disputes before the West Bengal . Board of Secondary Education in respect to the aforesaid election can hardly be a ground for not permitting the Managing Committee to complete reconstitution of the Managing Committee. On the contrary such elections having been held, the same will be deemed to be validly held unless and until set aside by a appropriate authority after proper adjudication. It does not even appear from the records that on receipt of the complaints the West Bengal Board of Secondary Education took any step to adjudicate the same either by giving a notice to the Managing Committee the elected members and other interested parties or otherwise.

38. Under such circumstances, I am of the view that mere raising of dispute relating to the election before West Bengal Board of Secondary Education cannot take away the right of the Managing Committee to complete the process of reconstitution of the Managing Committee.

39. Lastly, it has been submitted by the Board that admittedly the President of the Board having appointed an Ad hoc Committee and Ad hoc Committee also having taken charge of the school, the Managing Committee because of such subsequent events has lost its right to continue and to complete the process of election. In this connection Mr, Moitra has drawn the attention of the Court to Clause 3 of the aforesaid Circular being No. S/421 dated 29-12-94 wherein it is provided inter alia that the Board reserves the right to appoint Administrator/Ad hoc Committee where the same would be necessary for administrative reasons. It has been contended by Mr. A. B. Chatterjee and Mr. Goswami that since the writ petitioners have not challenged the appointment of such Ad hoc Committee either by way of amending the writ petition or even by way of supplementary affidavit, the writ petitioners are bound by the appointment of such Ad hoc Committee. Mr. Bhattacharjee appearing for the writ petitioners, however, submitted that appointment of Ad hoc Committee has been challenged in the supplementary affidavit and in any event the Court has ample power to take note of subsequent event and also the power to mould the reliefs asked for in the writ petition for ends of justice and in the instant case, such appointment of Ad hoc Committee clearly being contrary to the interim order granted by Atamas Kabir, J. permitting the Managing Committee to continue such order appointing the Ad hoc Committee is a nullity and void and is inoperative. In the supplementary affidavit appointment of Ad hoc Committee has been challenged.

40. That the Court can take note of subsequent event and has power to mould reliefs for ends of justice is well settled and if any authority is needed in support of the same, the cases reported the decision of Division Bench in the case of Ali Ahmed Vs. State of West Bengal and Others, may be referred to, which followed the decision of the Supreme Court in the Pasupuleti Venkateswarlu Vs. The Motor and General Traders, Same is the view of the Andhra Pradesh High Court as it will appear from the Full Bench of the said High Court reported in Dhronamraju Satyanarayana Vs. N.T. Rama Rao and Others,

41. That apart since it is the respondents themselves are relying on such subsequent event of appointment of Ad hoc Committee and claiming the same to be a valid order and impediment to permit the Managing Committee to complete the reconstitution, and not contrary to the interim order, it is certainly open to the Court to examine such order for the purpose of ascertaining whether the same is an impediment to the right of the Managing Committee to complete the process of re-constitution. As it has been held in the case of Surendra Prasad Misra Vs. Oil and Natural Gas Commission, that if an act of the Government or the Governmental agency is apparently not in accordance with the rule of law, equity and fair play, it would be a plain exercise of judicial power for the writ Court to intervene. When there is manifest injustice and after coming to a finding that an equity exists in favour of the petitioner, the writ Court can mould the relief in order to do justice between the parties. The concept of justice cannot be restricted on to a strait-jacket formula, but is very wide and the law Courts exist to do justice and come in aid of a person who seeks justice against an

administrative caprice and its epse dixit.

42. On examination of the order being S/107 dated 2nd March, 1995 passed by the President of the West Bengal Board of Secondary Education appointing an Ad hoc Committee it, however, appears that the said order is ex facie bad inasmuch as the order has been passed on the basis of an alleged emergency which is non-existent. It is stated in the order as after expiry of the tenure of the Managing Committee of the school after 31-12-94 no prayer has been made before the Board for extension of the tenure and no programme for reconstitution of the Managing Committee was also sent, there is an administrative vacuum and deadlock for removal and for proper administration of the school in the interest of education, the Ad hoc Committee is appointed.

43. It will thus appear from the said order the President of the Board proceeded on the footing that the tenure of the Managing Committee has expired on 31-12-94 and an administrative vacuum has been created. But the President of the Board totally overlooked that tenure of the Managing Committee of the said school along with the Managing Committee of all other schools have already stood extended till 30th June, 1995 by virtue of General Circular No. S/421 dated 29-12-94 and consequently the question administrative vacuum OF deadlock leading to an emergent situation does not and cannot arise, because of extension of the lifetime of the Managing Committee by the aforesaid Circular dated 29-12-94 till 30th June, 1995. The Managing Committee was very much continuing and, therefore, there was no administrative deadlock and emergent situation at all warranting exercise of such emergent power by the President of the Board.

44. That apart, the allegation that no application was made for extension of the lifetime and Election Programme was also not sent are also not correct inasmuch as it has been specifically (sic) to the supplementary affidavit that prayer for extension was sent to the Board and the Election Programme was also duly sent and approved. The Board has not filed any affidavit denying such allegations and, therefore, the same would be deemed to have been admitted.

45. Mr. Moitra has very fairly submitted that although complaints were received about the irregularity of the election, the Ad hoc Committee was not appointed on such ground but on the ground of administrative vacuum as stated in the said order itself.

46. That apart as it has been held by the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

47. Such order of appointment of Ad hoc Committee, therefore, ex facie is bad and the same cannot be an impediment to the right of the Managing Committee to complete the process of reconstitution.

48. That apart, the aforesaid order appointing Ad hoc Committee is also a nullity and inoperative being contrary to the aforesaid interim order granted by Altamas Kabir, J. permitting the Managing Committee to continue. The defence of Mr. Moitra on such point is that the Board never having received any communication of such interim order, the Board was not aware of such interim order and, therefore, has not committed any wrong by passing such order appointing the Ad hoc Committee.

49. While such a defence may be a good ground in a proceeding for contempt where contemner cannot be held guilty unless the order impugned is violated wilfully and deliberately, the fact remains such order of appointment of Ad hoc Committee is contrary to the said interim order and, therefore, the Court can hardly permit the same to stand and become operative, particularly, when it appears as pointed out hereinbefore that the order itself is ex facie bad there being no emergent situation warranting passing of such order.

50. Mr. Bhattacharjee appearing for the writ petitioners has submitted relying on the supplementary affidavit that the interim order passed by Altamas Kabir, J. on 23-12-94 directing maintenance of status quo as regards the functioning of the Managing Committee was communicated to all the respondents including the West Bengal Board of Secondary Education. In paras 2 and 3 of the supplementary affidavit it has been specifically pleaded that the aforesaid order dated 23-12-94 was communicated to all the respondents including the West Bengal Board of Secondary Education. Mr. Bhattacharjee has submitted communication of the order dated 23-12-94 was made to the Secretary, West Bengal Board of Secondary Education by Registered Post and in support of such contention has produced inter alia the original registration receipt No. 4397 wherefrom it appears the letter communicated the said interim order was sent by Registered Post on 26-12-94 to the Secretary, West Bengal Board of Secondary Education at 77//2, Park Street, Calcutta-16. Under such circumstances, the presumption obviously would be that such letter was served upon West Bengal Board of Secondary Education. Although such presumption may be a rebuttable one, no affidavit has been filed denying such service and it has merely been submitted by Mr. Moitra orally that such communication was, not received by the Board. The same, however, cannot be accepted as a proper rebuttal of such presumption.

51. That apart, under the facts and circumstances of this case, there cannot be any manner of doubt that Jagatjyoti Jana who is one of the added respondents in the writ petition and at the same time is also a member of the said Ad hoc Committee was fully aware of the said interim order granted by Altamas Kabir, J. directing maintenance of status quo as regards the functioning of the Managing Committee. Therefore, being aware of the interim order it was his duty to appraise other members of the Ad hoc Committee of such interim order passed by Altamas Kabir, J. and because of the existence of such interim order and, therefore, the Ad hoc Committee could not have taken charge of the school in

violation of such interim order, assuming that the Ad hoc Committee has taken charge of the school.

52. There has been a great deal of debate amongst the parties as to whether the Ad hoc Committee has been able to take over charge of the school. While Mr. Goswami appearing for the Ad hoc Committee has referred to their affidavit-in-opposition and annexures thereto show that charge was taken of the school in presence of the teacher in charge, in the supplementary affidavit the writ petitioner has made a specific allegation that the said Ad hoc Committee forcibly took the key and some documents of the school although the order appointing Ad hoc Committee was never served upon the school, for which a complaint was lodged in the police. Such allegations have also been made by the majority of the teaching and non-teaching staffs of the school in their application for addition of parties, for whom Mr. Bikash Ranjan Bhattacharjee is appearing. It is, however, not really necessary for this Court to go into such disputed question whether the Ad hoc Committee could take over charge of the school or whether such taking over of charge was made forcibly as alleged, inasmuch as even proceeding on the footing that such charge has been taken over by the Ad hoc Committee of the school, the same cannot be sustained being contrary to the aforesaid interim order passed by Altamas Kabir, J. and therefore is a nullity. Mr. Bhattacharjee has rightly submitted relying in the case of Mahindra Nath Holder v. State, reported in (1990) 94 Cal WN 338, that any action taken contrary to the order of the Court apart from being contumacious would also be a nullity.

53. In the instant case it appears that said Jagatjyoti J.ana right from the beginning has played a very important role against the Managing Committee of the school. He made complaints to the Assistant Inspector of Schools and to the District Inspector of schools as also the West Bengal Board of Secondary Education as to the alleged irregularity in the election. He appears to have even played a part in the matter of appointment of the Ad hoc Committee. It appears from the records produced by the Board that on February 2, 1994 a proposal was made under the subject "Administrative vacuum in Gobra I.N.K.M. High School" for taking steps in respect thereof. It is recorded in the said proposal a ground has arisen to presume administrative vacuum is continuing in the school as after the expiry of the lifetime of the school no prayer has been made for extension. In the said proposal it is also written that it is known from a joint petition in the attached sheet submitted by the Assistant Teacher of the school and other interested persons of the school that the school administration has totally collapsed with mal-practices and corruption. Although from the records no attached sheet could be seen in other places of records, a complaint addressed to the President of the Board jointly filed inter alia by Jagatjyoti Jana can be found. It will appear from the records that President of the Board signed the order on 2nd March, 1995 appointing the Ad hoc Committee on the only ground of administrative vacuum as after expiry of the Managing Committee dated 31-12-94, there has been no further extension and not on any other ground. It does not, however, appear from the records that such order was sent directly to

the school by Registered Post. It however appears from the records that a copy of the said order dated 2nd March, 1995 was handed over to said Jagatjyoti Jana against grant of receipt on the same day i.e. 2nd March, 1995 on his prayer and there is nothing in the record to show the order was served upon the school directly. The allegation made by the writ petitioner in his supplementary affidavit the same was never served upon the school has also not been denied by any affidavit. Said Jagatjyoti Jana along with others were added as respondents, in the writ petition on their own application by T. Chatterjee, J. by an order dated 10th January, 1995 and since then he is being represented thereafter by his learned Advocate in the said writ proceedings. He was very much aware of the interim order granted on 23rd December, 1994 by Altamas Kabir, J. directing maintenance of status quo relating to administration of school of the Managing Committee and the fact that same was extended from time to time.

54. In such view of the matter when the Ad hoc Committee claims to have, taken charge of the school on 10th March, 1995 the aforesaid interim order having been extended in the meantime was vety much subsisting and, therefore, the members of the Ad hoc Committee could not have taken charge of the school in violation of the aforesaid interim order and consequentially taking over charge of the said school and all actions subsequent thereto being in violation of the aforesaid interim order are nullity, void and inoperative.

55. In such a situation, even assuming the Ad hoc Committee took over charge of the school on the said date the same being contrary to the aforesaid interim order of the Court and, therefore, being nullity the Ad hoc Committee cannot remain in charge of the scheme and must return charge of the school to the Managing Committee. The view which I am taking is supported by the decision of this Court in the case of Manindra Nath Halder v. State of West Bengal, reported in (1990) 94 Cal WN 338 (para 18), where it has been held any action taken contrary to an order of the Court is a nullity. In the case of The Hilla Tea Estates and Industries Ltd. and anothers Vs. State of West Bengal and others, it was held inter aliathat an act done in a wilful disobedience of an injunction of Court's order is not only a contempt of Court hut is also illegal and invalid and the same therefore, cannot affect any change in the rights and liabilities of others. In the said decision the learned single Judge of this Court relying on the Division Bench of the Patna High Court in the case of Subodh Gopal Bose Vs. State of Bihar, directed cancellation of a lease granted to a third party by the State of a tea garden, which was taken possession in violation of Court's order and restoration of possession to the original owner.

56. In the case of Krishna Kumar Khemka Vs. Grindlays Bank P.L.C. and others, the Supreme Court held inter alia where a tenancy has been created in favour of a person in breach of the order of Court, the said tenant cannot claim any protection under the provisions of the Act and, as such, is liable to be evicted.

57. Under such circumstances, in my view, there is no impediment at all to the right of the Managing Committee to complete the process of recohstitution and,

therefore, a direction permitting the Managing Committee to hold the office bearers' election after placement of the departmental nominee is called for.

58. It appears after the completion of election of teaching and non-teaching category on 8th September, 1994 the teacher in-charge duly intimated to the District Inspector of Schools for placement of the departmental nominee. But no such nominee was placed by the District Inspector of Schools and no reason has also been disclosed. Thereafter the teacher in charge intimated such fact to the Board for appropriate action. District Inspector of Schools has not filed any affidavit either denying such allegation or disclosing reasons for non-placement of the departmental nominee.

59. The learned Advocate appearing for the District Inspector of Schools has supported the submission of the other respondents and has tried to contend that no departmental nominee was placed by him as there is allegation of irregularity in holding such election; but no records has been produced by the District Inspector of Schools to show any such decision was ever taken by him or any reference was made to the West Bengal Board of Secondary Education by him raising any dispute against the election.

60. Be that as it may, because of the reasons stated above, when the Managing Committee is entitled to complete the process of reconstitution, D.I., Schools shall now place a departmental nominee forthwith.

61. The writ application, therefore, succeeds. The Managing Committee of the school will be entitled to complete the re-constitution of the Managing Committee by holding the office bearers' election. The District Inspector of Schools (S.E.), Midnapore, therefore, is directed to place the departmental nominee positively within a week from the communication of this order. The respondent No. 5 shall hold the office bearers' election within a fortnight after placement of such departmental nominee and the newly constituted Managing Committee shall be handed over charge of the school by the outgoing Managing Committee positively by 30th May, 1995. The order dated 2nd March, 1995 passed by the President of the West Bengal Board of Secondary Education being a letter No. S/107 dated 2nd March, 1995 appointing Ad hoc Committee is set aside. The Ad hoc Committee shall return the charge of the school including all documents and keys to the teacher in charge within 72 hours from the date. All the teaching and non-teaching staffs of the schools shall be paid by the teacher in charge without delay and the Bank where the account of the school situates shall permit the teacher in charge to operate the school account for the aforesaid purpose till assumption of charge by the new Managing Committee.

62. There will be no order as to costs.

63. In view of the order made above, the application for vacating interim order fails and the same is rejected.

64. Mr. Tulsidas Maity learned Advocate-appearing for the Ad hoc Committee

prays for stay of operation of the order. Such prayer is also made on behalf of the added respondent being Jagatjyoti Jana and others. The prayer is considered and rejected.

65. Petition allowed.