

(2006) 05 CAL CK 0029
In the Calcutta High Court
Case No : Writ Petition No. 4809 (W) of 2006

Harish Chandra Sarkar and Another	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 10-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 32
West Bengal Board of Secondary Education Act, 1963 — Section 28(2)

Citation : (2007) 1 CALLT 25

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Sadananda Ganguly, Ekramul Bari, K.M. Hossain and S. Bari, for the Appellant; Kallol Basu, for the West Bengal Board of Secondary Education, Tapabrata Chakraborty, for the State and Debabrata Ray, for the Respondent

Judgement

Soumitra Pal, J.—In the writ petition the petitioner Nos. 1 and 2 the President and Secretary respectively of Rajlakshmi Kanya Vidyapith, Barajaguli, Nadia (for short "the said institution") have challenged the order appointing Administrator in the said institution in pursuance to the Memo. No. NAD-724/06/G/1 dated 17th February, 2006 issued by the West Bengal Board of Secondary Education (for short "the Board"). They have also prayed for cancellation of the intimation dated 18th February, 2006 issued by the Administrator of Rajlakshmi Kanya Vidyapith, in Barajagulia, Nadia, the respondent No. 7. Challenging the said memo and the intimation, the matter was moved on 9th March, 2006 when direction for affidavits were issued. No interim order was passed. However, it was recorded that action taken by the Administrator shall abide by the result of the writ petition.

2. Against the said order an appeal was preferred wherein an order was passed. The relevant portion is as under:

2. In view of the fact that the learned single Judge has not in any way either granted or refused the interim relief, we would not go into the matter. However,

we fix the matter peremptorily before the learned single Judge on 3rd April, 2006 on which day the learned single Judge shall consider all the contentions raised in this appeal. The papers shall be placed before the learned single Judge. This order shall not be to the prejudice of any party. We make it clear that it shall be for the learned single Judge to consider the matter on its own merit.

3. With the above observation the appeal is disposed of treating it as on day's list. The application is closed.

3. After disposal of the appeal, the matter was mentioned. Pursuant to directions, the matter was listed and heard after exchange of affidavits.

4. Be it noted that the Headmistress of the said institution was added as a party respondent and was heard.

5. Learned advocates appearing on behalf of the respondents at the very outset had questioned the locus standi of the petitioners. According to them since the Managing Committee (for short "the committee") stood superseded on 17th February, 2006, the resolution passed by the so called majority members of the committee in its meeting on 26th February, 2006 empowering the Secretary to seek redressal against the alleged action before a legal forum is not tenable in the eye of law. Since the petitioner Nos. 1 and 2 are, no longer the President and Secretary of the said institution, even assuming the petitioners held their respective posts, still the meeting of the committee is not valid since there was no agenda as postulated under Rule 21 of the Management Rules (for short "the Rules"). There is no evidence to show that the resolution passed was unanimous. Once an administrator is appointed it cannot be unsettled. Submission was made that a meeting cannot be called bypassing the Headmistress of the institution. Moreover, under Rule 25(2) and 28 of the Rules, the Secretary has no independent role to play since he carries out the functions assigned by the Committee. In this regard reliance was placed on the Judgment in Debi Prosad Singha Roy Vs. State of West Bengal and Others, . It was further submitted that in view of the principles of law laid down in the said Judgment, the committee should have been made a party and as it has not been impleaded, the writ petition should be dismissed on the ground of non joinder of parties.

6. In reply, it was submitted on behalf of the petitioner that as a measures of abundant caution a supplementary affidavit was filed to highlight the fact that pursuant to the notice dated 24th February, 2006, the President had called for an emergency meeting where majority of the members were present wherein a resolution was adopted empowering the petitioners to challenge the purported appointment of the administrator before a legal forum. In this context, attention was drawn to page 5 of the supplementary affidavit. Further, locus standi of the petitioners have neither been denied by the respondents in their affidavits. Rather it has been accepted. Relying on a Judgment of the Supreme Court in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, ; it was submitted that the Rules cannot curtail the right of an individual

since Article 226 of the Constitution of India does not describe the classes of persons entitled to apply thereunder. But it is implicit in the exercise of extraordinary jurisdiction that the relief asked for must be one to enforce legal rights. The existence of the right is the foundation of the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. Legal right can be enforced under Article 226 which must ordinarily be a right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself. Submission was also made that the situation which was prevailing on 27th February, 2006 compelled the petitioners to file the writ petition. Since the rights of the petitioners to function as President and Secretary of the said institution were infringed by the purported intimation on 18th February, 2006 issued by the administrator, the respondent No. 7, under the law they were well within their rights in approaching the Court for redressal of their grievances.

7. So far as preliminary issue regarding locus standi of the petitioners is concerned, I find that it is not disputed that the petitioner Nos. 1 and 2 were the President and Secretary of the said institution. After the purported appointment of the administrator, in a meeting held on 26th February, 2006, a resolution was adopted. In the said meeting which was validly convened the majority members empowered the Secretary to take legal steps challenging the action of appointment of administrator. Therefore, the submission made on behalf of the respondents that the petitioners have no right to challenge the appointment of administrator after supersession of the committee is preposterous, because in that event it shall give a handle to the authorities to supersede a duly elected Managing Committee on trumped up charges and any illegal, arbitrary and mala fide appointment of administrator shall be deemed to be valid even if a valid resolution is passed by the Managing Committee. If the argument put forward by the respondents is accepted it shall give a premium to the illegality and shall signal the end of rule of law. In that event the tenure of no Managing Committee shall be safe. In this regard, it shall also be proper to deal with the affidavits filed by the respondents controverting the statements of the petitioners. In paragraph 3 of the writ petition it has been stated - "that your petitioner No. 1 is the president and petitioner No. 2 is the secretary of the said school and they are duly empowered by the majority members of the Managing Committee to move the instant writ application". The respondent Nos. 4 to 6 in their affidavits while dealing with the paragraph 3 of the writ petition have submitted as under:

Save as would appear from admitted records and save as expressly admitted by me hereinabove I deny each and all the allegations contained in paragraphs 1 to 16 of said petition as if the same are set out and traversed in seriatim.

8. Similarly in the affidavit filed on behalf of the respondent Nos. 1 to 3 and 7 the said paragraph has been dealt with as under:

The allegations made in paragraph 1 to 3 are matters of record.

9. Hence, a perusal of the statements in their affidavits by the respondents shows that the respondents have admitted that the resolution adopted on 26th February, 2006 are matters of record and, therefore, cannot turn around and question the locus standi of the petitioners.

10. Moreover, there is another aspect of the matter. It has not been disputed by the respondents that the petitioner Nos. 1 and 2 were President and Secretary respectively of the said institution. Therefore, even assuming that the committee was validly superseded and there was no resolution in the eye of law empowering the present petitioners to seek legal remedy, the question is can the petitioners challenge the order and the intimation impugned? The answer lies in the Judgment of the Apex Court in Calcutta Gas Company (supra) where it has been held as under:

The first question that falls to be considered is whether the appellant has locus standi to file the petition under Article 226 of the Constitution. The argument of learned Counsel for the respondents is that the appellant was only managing the industry and it had no proprietary right therein and, therefore, it could maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right...it has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself.

11. In the present case, admittedly the petitioners were the President and Secretary of the said Institution. Since the committee was superseded, there was an infraction of the rights they enjoyed under the Rules as President and Secretary, Hence, in view of the law laid down in Calcutta Gas Company (supra), the petitioners were competent to move the writ petition.

12. Turning to the merits, it was argued on behalf of the petitioners that the present Committee had taken over the charge of the management of the said institution on 31st May, 2003. On 16th December, 2005 a showcause notice was issued by the Secretary of the Board. On 28th December, 2005 the petitioner No. 2 submitted a reply. Thereafter, nothing was heard till a purported order was passed by the President of the Board contained in the memo dated 17th February, 2006 appointing the respondent No. 7 as the administrator. According to the petitioners the Board under the Rules should have given the committee an

opportunity of hearing. Further, nothing is revealed from the affidavits filed on behalf of the respondents to show that there arose an emergency or what had prompted the President to invoke the emergency power. Further the action of the President was questioned since he had "considered the report on the affairs of Rajlakshmi Kanya Vidyapith, P.O. Kalyani, Dist. Nadia" and had appointed respondent No. 7 "to act as Administrator of Rajlakshmi Kanya Vidyapith, P.O. Kalyani, Dist. Nadia for a period of one year..." and not of the said institution at Barajaguli.

13. Submission was made that the purported Memo No. NAD-724/06/G/U-8) was despatched on 17th February, 2006 by registered post with acknowledgement due and the respondent No. 7, that is, the Administrator an Assistant Inspector of schools - a public servant - could not have received the memo on 18th February since it was Saturday, an official holiday and, therefore, could not have sent the purported intimation dated 18th February, 2006. Since the petitioners are yet to receive the purported memo production of the despatch register of the Board was prayed to go into the fact whether at all the memo was despatched by the Board and received by the Administrator on 17th and 18th February, 2006 respectively. According to the petitioners, if at all, the respondent No. 7, should have assumed charge of the institution at Kalyani and not of the said institution at Barajaguli, since the purported memo referred to the institution at Kalyani. It was submitted that there was a calculated attempt on the part of the administrator to usurp the power enjoyed by the petitioners, since it appears the respondent No. 7 on 18th February, 2006 itself had prepared a letter head and a seal claiming himself to be the administrator of the said institution at Barajaguli and had sent the purported intimation. Even assuming that the President of the Board was justified in passing the purported order contained in the memo, yet it does not disclose the reasons appointing an Administrator. It is a verbatim reproduction of Section 28(2) of the West Bengal Board of Secondary Education Act, 1963 (for short "the Act") and non-application of mind is palpable. In this regard reliance was placed on the Judgments of the Division Bench in Panchanan Mandal v. West Bengal Board of Secondary Education and Ors. reported in 1996 (Cal) 240 and of the single Bench in Sachi Nath Ghosh and Ors. v. West Bengal Board of Secondary Education and Ors. reported in 1976(2) CLJ 289.

14. Learned advocates on behalf of the respondents including the added respondents submitted that there was no failure in meting out natural justice, since a notice to show cause was served in the month of December, 2005 not only on the petitioner but also on all the members of the committee. The question of personal hearing does not arise as nothing was done personally by the Committee. Further, the petitioner did not question the power of the Board to supersede the committee of an institution. Since it appeared from the enquiry report dated 8th December, 2005 that there was an emergent situation which warranted appointment of administrator, an administrator was appointed and once administrator is appointed, it cannot be unsettled. Therefore, the action taken was within the parameters of law and there was no infringement or

violation of legal or constitutional right. Reliance was placed on the Judgment in Adwaitya Kumar Maity and Ors. v. President, Adwaitya kr. Maity and others Vs. president, W.B. Board of Secondary Education and Others, and Debi Prosad Singha Roy Vs. State of West Bengal and Others, in support of their submissions. However, learned advocate appearing on behalf of the Board while producing the record in his usual fairness conceded that the Board cannot show any document to demonstrate that the purported memo was despatched by registered post on the 17th February, 2006 and had reached its destination on 18th February, 2006. Rather it appeared that it was despatched on 21st February, 2006. Submission was made that a copy of the memo was also despatched by special messenger on 18th February, 2006 and was received by the Secretary of a Minister. On a query it was submitted that no copy of the enquiry report dated 8th December, 2005 was supplied to the petitioners.

15. Heard learned advocates for the parties.

16. In the writ petition the petitioners have challenged the appointment of administrator in Rajlakshmi Kanya Vidyapith at Barajagulia in the district of Nadia.

17. It is appropriate to set out the impugned intimation dated 18th February, 2006 by the Administrator, the respondent No. 7, to the writ petitioners which is as under:

To,

Sri Sanjay Chatterjee (Ex. Secy. R.K.V.)

Ref : W.B.B.S.E.'s Memo No. NAD-724/06/G/1 dated 17.02.06

In reference to the memo No. cited above, he is requested to handover the all documents vouchers, resolution book, Notice book and others relevant papers related with the school within three days from the receipt of this letter to the undersigned.

This may kindly be treated as most urgent.

Administrator Railakshmi Kanya Vidyapith Barajagull, Nadia. Dated 18.02.06

Memo No. 46(3)/1

Copy forwarded for information to the

I) President, W.B.B.S.E., 77/2 Park Street, Kol-16

II) Director of School Education, Bikash Bhavan, Kol-91

III) D.U.S.E.) Nadia.

IV) Officer-in-charge, Haringhata, P.S.

(Emphasis supplied)

18. It appears that the said intimation is pursuant to a Memo No. NAD-724/06/

G(1-8) dated 17th February, 2006.

The relevant portion of the said memo, is as under:

From : Deputy Secretary (General) West Bengal Board of Secondary Education
To: The Headmaster/Headmistress" Head of the Institution Rajlakshmi Kanya Vidyapith. P.O. Kalyani, Dist. Nadia. Sub: Administration of Rajlakshmi Kanya Vidyapith, P.O. Kalyani, Dist. Nadia.

Dear Sir or Madam,

I am directed to convey the order of the President, West Bengal Board of Secondary Education appointing The Assistant Inspector of Schools (SE), Kalyani Sub-division, P.O. Kalyani Dist. Nadia to act as Administrator of Rajlakshmi Kanya Vidyapith P.O. Kalyani, Dist. Nadia.

The order of the President dated (sic) is reproduced below:

I have considered the report on the affairs of Rajlakshmi Kanya Vidyapith, P.O. Kalyani Dist. Nadia and other papers in the file in this regard.

In view of the unsatisfactory reply to the show cause notice issued by the West Bengal Board of Secondary Education to the members of the Managing Committee and also in view of the recommendation of the Commissioner of School Education W.B. and Ex-Officio Principal Secretary, School Education, W.B. in this regard I am decidedly of the view that an emergency has arisen in the affairs of the Managing Committee of the school. It is, therefore, required to supersede the Managing Committee of the school to safeguard the interest of the institution.

In consideration of the aforesaid facts and circumstances I, President West Bengal Board of Secondary Education In exercise of the powers conferred upon me under 28(2) of the West Bengal Board of Secondary Education Act, 1963, as amended and In deference to the particular recommendation of the Commissioner of School Education W.B. and Ex-Office Principal Secretary, School Education Department W.B. hereby supersede the present Managing Committee of the school and appoint The Assistant Inspector of Schools (SE) Kalyani Sub-division, P.O. Kalyani Dist. Nadia to act as administrator of Rajlakshmi Kanya Vidyapith P.O. Kalyani, Dist. Nadia for a period one year from the date of assumption of charge of the school or till completion of the reconstitution of the Managing Committee of the school with election of office-bearers or until further orders whichever is earlier.

The Administrator so appointed will assume charge of the school forthwith and exercise powers and perform the functions of the Managing Committee including the power to operate the Bank and Postal Accounts standing in the name of the institution.

The Administrator shall take steps towards the reconstitution of Managing Committee in accordance with the provisions of Management of recognized Non-

Govt. Institutions (Aided & Unaided) Rule, 1969, as amended from time to time and under Government Notification No. 855-Edn(S) dated 23.12.1980 and instructions issued by the Board from time to time in this regard, within the tenure of his appointment.

The Administrator of the school will also take steps for the information of the Staff Council & Academic Council as contemplated under Rules 29 & 30 of the Rules for the Management of Recognised Institutions (Aided & Unaided) Rules, 1969, as amended, to advise him in the matter of smooth and proper functioning of the Institution.

On assumption of charge the Administrator will send a report on the affairs of the School.

You are, therefore, requested to contact the Administrator appointed under this order and assist him/her assuming charge of the school and send a report to this office regarding assumption of charge of the school by Administrator.

Yours faithfully, Sd/- P. Ghosh Deputy Secretary(General)

Memo No. Nad - 724/06/G (1-8) Date 17.02.06 Copy forwarded for information and necessary action to:

1. The Assistant Inspector of Schools(SE), Kalyani Sub-Division, P.O. Kalyani, Dist - Nadia.

Regd. he is requested to assume charge of the school as Administrator forthwith. A report that he has assumed charge of the school may kindly be sent to the Board immediately.

He is also requested to forward to this office a report on the affairs of the school as early as possible.

2. the Secretary of the superceded Managing Committee of Rajlakshmi Kanya Vidyapith P.O. Kalyani. Dist Nadia.

3. the Director of School Education, West Bengal.

4. the Postmaster General, West Bengal Circle, Kalkata-700001

5. The District Inspector of School (SE) Nadia

6. OSD Unit

7. President Unit

8. Law Cell

Deputy Secretary (General)

(Emphasis supplied)

19. It is to be noted that the Memo, dated 17th Febrary, 2006 is regarding

appointment of Administrator Rajlakshmi Kanya Vidyapith at Kalyani.

20. Perusing the memo which has been annexed to the affidavit in reply I find there is no mention of the date on which the order was passed by the President of the Board. It appears that the President had considered the report on the affairs of Rajlakshmi Kanya Vidyapith of Kalyani. He found the reply to the show cause issued by the Board as unsatisfactory. The recommendation of the Commissioner of School Education and Ex-officio Principal Secretary of School Education, West Bengal was also taken into account and came to a finding that as an emergency arose regarding the affairs of the committee of the institution and in order to safeguard the interest of the institution he thought it fit to supersede the committee. It is in the backdrop of these facts and circumstances, the President in exercise of the powers u/s 28(2) of the Act had superseded the committee and appointed the Assistant Inspector of Schools (S.E.), Kalyani to act as an "Administrator of Rajlakshmi Kanya Vidyapith; P.O., Kalyani, District Nadia". Copies of the memo were, amongst others, also sent to the respondent No. 7, requesting him to assume charge of the institution as administrator forthwith and the Secretary of the superseded Managing Committee of Rajlakshmi Kanya Vidyapith, at Kalyani, Director of School Education, West Bengal, and the District Inspector of Schools (S.E) Nadia "for information and necessary action". It appears that memo dated 17th February, 2006 was despatched by registered post with acknowledgement due. From the impugned intimation dated 18th February, 2006, it appears that the respondent No. 7 had acted on the basis of the impugned Memo, dated 17th February, 2006, which is relating to the appointment of administrator in Rajlakshmi Kanya Vidyapith, Kalyani. However, surprisingly he had taken charge as an administrator of Rajlakshmi Kanya Vidyapith at Barajaguli, that is, the said institution.

21. It is evident that the respondent No. 7 before assuming charge as an administrator of the said institution did not bother to verify the institution and its address. Relying on the impugned memo the respondent No. 7 by the purported intimation dated 18th February, 2006 had requested the Secretary of the said institution at Barajaguli to hand over all documents, vouchers, resolution book, note book and other related papers and assumed charge on 18th February, 2006.

22. There is another aspect of the matter. The Board was directed to produce the despatch register relating to the despatch of the impugned memo dated 17th February, 2006. Records were produced. It appeared that it was despatched not on 17th February, 2006 but on 21st. Though there is no mention either in the affidavits filed on behalf of the respondents or in the memo regarding any other mode of despatch, records revealed that the same was sent by special messenger. It was received on 18th February, 2006 by the Secretary of a Minister and not by the respondent No. 7. Hence, I find that there was no occasion for the respondent No. 7 to receive the impugned memo dated 17th February, 2006 on the very next day - 18th February, 2006 - the date on which the purported intimation for assumption of charge was issued. Moreover, be it

noted that the respondent No. 7, a public servant, could not have any occasion to attend office on 18th February, 2006, which was a Saturday - a day on which all Government offices are closed. Therefore, it is quite strange how the respondent No. 7 could issue the purported intimation dated 18th February, 2006 and since it appears from annexure at page 50 of the writ petition that on 18th February, 2006 the respondent No. 7 had already printed letter heads and prepared a rubber stamp describing himself as "Administrator of Rajlakshmi Kanya Vidyapith, Barajagulia, Nadia", the action of the respondent No. 7 is definitely over zealous. This action on the part of the respondent No. 7, a public servant, in assuming charge as administrator of the said institutiton, is beyond comprehension since the impugned memo dated 17th February, 2006 containing the order of the President issued by the Deputy Secretary (General) of the Board is regarding the maladministration and subsequent appointment of administrator in Rajlakshmi Kanya Vidyapith at Kalyani. Since I find that copies of the purported intimation dated 18th February, 2006 issued by the respondent No. 7 was also sent, amongst others, to the President of the Board, the Director of School Education, West Bengal and the District Inspector of Schools (S.E.), Nadia it is surprising that the said respondents failed to act in restraining the said respondent from perpetrating an illegal act in assuming charge of an administrator of the said institution since from the affidavits filed by the Board and the said respondents, I find there is no denial that they were not aware of the intimation impugned. In my view, there was gross dereliction of duty on the part of the Board, the Director of School Education, West Bengal and the District Inspector of Schools (S.E.), Nadia in not restraining the respondent No. 7 from acting as an administrator of the said institution at Barajaguli. Rather knowing fully well they kept silent and were parties to an unwarranted act, which is deplorable.

23. Turning to the issue regarding the management of the institution, even assuming that the purported memo relates to the said institution at Barajaguli, it appears that "report" on the affairs of Rajlakshmi Kanya Vidyapith, P.O Kalyani, District Nadia and other papers and the unsatisfactory reply to the show cause had prompted the President of the Board to exercise emergency power u/s 28(2) of the Act. It may be noted that on 16th December, 2005 a notice to show cause was issued by the Secretary of the Board. On 18th December, 2005 the petitioners had replied. Thereafter, nothing was heard as it appears from the memo impugned, till the President by an order had directed supersession of the committee and appointed "Assistant Inspector of School (S.E.), Kalyani to act as administrator of Rajlakshmi Kanya Vidyapith at Kalyani for a period of one year from the date of assumption of charge of the school or till completion of reconstitution of the Managing Committee of the school or until further orders whichever is earlier". There is no whisper in the affidavits filed on behalf of the respondents what had prompted them to initiate exercise of emergency power under the Act. Much has been stated about the mal administration and financial irregularities by the present members of the committee. Purusing the show

cause notice dated 16th December, 2005, I find the financial irregularities, if any, are of the year 2002 much before the assumption of charge by the present members of the Managing Committee. Other charges except one relate to certain disputes between the Secretary and the Headmistress - the added respondent, and the Drawing and Disbursing Officer, who is the administrator, that is, the respondent No. 7. In this regard, the statements made in paragraph 5 of the affidavit-in-opposition affirmed on behalf of the respondent Nos. 1, 2, 3 and 7 deserve to be noted, which are as under:

5. I say that there has been gross irregularities in the matter of management of the respondent School and furthermore, there was gross irregularities and misappropriation of fund by the petitioner who were the members of the Managing Committee of the respondent School, and after receiving the complaint and after making investigation, the complaint appears to have been justified and in that view, for the first instance, D.D.O. was appointed in order to control the fund flow of the respondent School.

24. Further in paragraph 3(b) of the affidavit in opposition affirmed on behalf of the respondent Nos. 4 to 6, it has been stated as under:

3(b) The said petition suffers from material suppression of facts and it does not inspire the confidence of this Hon"ble Court to pass any order inasmuch as no case has been made out by the writ petitioner to seek Mandamus as a matter of right. The school in question suffers from administrative chaos and for which a thorough enquiry was conducted. The statements have been recorded by the different persons of the school in question and there have been serious allegations of financial irregularities and other illegalities for which the teachers of the school had to suffer. It has also been reported that the Headmistress concerned of the school is allegedly restrained from discharging her duties by reason of unwanted interference by the petitioner. Be that as it may, if the school suffers from any administrative infirmities and/or if there has been an onslaught on the administrative fulcrum then the students are to suffer. The Board has certain legal responsibilities and/or obligations to see the conduct and business of the school which has been recognized by it.

25. Nothing is revealed from the paragraphs quoted about the alleged financial irregularities. Those are bald statements without minimum particulars. In my view, these are virtually an echo of the charges in the show cause notice. Therefore, what had prompted the President of the Board to exercise emergency power u/s 28(2) of the Act is a mystery since the affidavits filed on behalf of the respondents do not disclose the situation which were emergent in nature. So far as "report" mentioned in the memo which formed the basis of the order impugned. I am of the view, in this era of transparency and the right to be informed, before embarking on an action which is punitive in nature, the Board ought to have furnished a copy of the same to the petitioners. Relying on a "report" without providing copy to the Committee is a travesty of justice and is opposed to the principles of natural justice and fairplay. Moreover, neither from

the memo Impugned nor from the affidavit-in-opposition it is not evident in what manner the said "report" was considered. The said report has not been annexed to the affidavits filed on behalf of the respondents. From a reading of the purported order contained in the memo impugned, I find it is verbatim reproduction of Section 28(2) of the Act devoid of any mention or discussion on mal administration in the said institution. According to me before exercising jurisdiction u/s 28(2) of the Act, the President ought to have acted with care and caution since the assumption of Jurisdiction under the said section requires a judicious approach - appraisal of facts on the basis of records, thereafter formation of belief and ultimately, an opinion leading to the passing of an order. In the instant case these are totally absent. Therefore, for the reasons as aforesaid, the purported memo containing the order passed by the President of the Board is patently illegal and cannot be sustained.

26. Further the petitioners were perfectly justified in not acting on the memo impugned as it appears a copy of the same was sent to the Secretary of the superseded Managing Committee of Rajlakshmi Kanya Vidyapith, at Kalyani and not to the Secretary of the said institution.

27. Regarding the recommendation dated 16th February, 2006 by the Commissioner of School Education, West Bengal and Ex-Officio Principal Secretary, School Education, on the appointment of Administrator less said the better. The said recommendation is as under:

Memo No. 635-SC/G Dated: Kolkata, the 16th February, 2006

From : The Commissioner of School Education, West Bengal & Ex-Officio Principal Secretary, School Education Department, West Bengal.

To

The Secretary

West Bengal Board of Secondary Education

Derozio Bhavan, Salt Lake, Karunamayee

Kolkata - 700091

Sub : Appointment of Administrator in Rajlakshmi Kanya Vidyapith P.O. - Barajaguli, Dist. Nadia.

Ref : W.B.B.S.E."s No. Nos. -667/06/G dated 15th February, 2006

...

In reference to the subject and memo noted above, the undersigned recommends that the Assistant Inspector of Schools, Kalyani Sub-Division, P.O. Kalyani, Dist., Nadia, may be appointed Administrator of Rajlakshmi Kanya Vidyapith, P.O. Barajaguli, District - Nadia, in the interest of education.

An early action is requested.

For Commissioner of School Education West Bengal.

(Emphasis supplied)

28. Though it refers to the appointment of Administrator of Rajlakshmi Kanya Vidyapith at Barajaguli in Nadia, I find he has merely referred to the memo dated 15th February, 2006 issued by the Board and had requested for an early action in the interest of education. It appears before recommending the appointment of administrator there was no appraisal of facts which is an essential element in the decision making process. In its absence, the recommendation made cannot be sustained. In this regard too, the affidavit filed on behalf of the State is silent.

29. Before I part with the Judgment, I cannot help in pointing out the speed in which events took place culminating in the appointment of the administrator in the said institution at Barajaguli. It started with the memo dated 15th February, 2006 issued by the Board for appointment of an Administrator and the Principal Secretary recommending on the very next day. On 17th February, 2006 the President of the Board recommended the supersession of the Managing Committee. The administrator took charge on 18th, though he was yet to receive the memo impugned. Why the respondents proceeded with lightening speed is a mystery. In such cases as it was held by the Apex Court in *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others*, cited on behalf of the petitioner, that malafide is to be presumed as the action was carried out in a post-haste manner. There is no answer to it in the affidavits filed by the respondents. To put it in the other way, the affidavits by the respondents are silent as to what had prompted the President of the Board to exercise the powers u/s 28(2) of the Act. The principles of law laid down in the *Sachi Nath Ghosh and Ors.* (supra) and *Panchanan Mondal* (supra) relied on by the petitioner are squarely applicable to the facts and circumstances of the case. The Judgment in *Adwaitya Maity* (supra) relied on by the respondents is not applicable as it deals with the old Rules. It is rather surprising that the authorities - be it State or the Board had acted contrary to the settled principles of law.

30. Therefore, the impugned Memo, dated 17th February, 2006 and the intimation dated 18th February, 2006 issued by the respondent No. 7 are set aside and quashed. Accordingly, all consequential actions by the respondent No. 7 are also quashed. The respondent No. 7 is forthwith directed to return all the documents, if acquired.

Urgent Xerox certified copy of this order, if applied for, be given to the appearing parties on priority basis.

Later:

Learned advocate appearing on behalf of the Board prays for stay of operation of the order. Considering the facts and circumstances, the prayer for stay is refused.