

(2011) 01 CAL CK 0080
In the Calcutta High Court
Case No : C.O. No. 3716 of 2010

Headmaster, Asansol Chowalal Madhyamik Vidyalaya and
Another

APPELLANT

Vs

Ram Naresh Singh and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151, 3, 9

Constitution of India, 1950 — Article 227

Management of Recognized Non Government Institutions (Aided and Unaided) Rules,
1969 — Rule 9

Citation : (2011) 01 CAL CK 0080

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Aniruddha Chatterjee, Partha Sarathi Deb Barman and Srijib Chakraborty, for the Appellant; Jiban Ratan Chatterjee, Lalit Mandal, Swapan Banerjee and Indranath Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Dipankar Datta, J.—The opposite party is eligible to be inducted in the Managing Committee of Asansol Chowalal Madhyamik Vidyalaya (hereafter the school) in the capacity of a life member. He instituted a suit, registered as Title Suit No. 59/2010, in the 1st Court of the Civil Judge (Junior Division) at Asansol, Burdwan for declaration and injunction on the ground that election of the candidate in the category of "person interested in education" for induction in the Managing Committee of the school is defective. The relief claimed in the suit reads as follows:

a) for declaration that the election process conducted by the current Managing Committee of the Asansol Chowalal Madhyamik Vidyalaya is illegal wrongful and ulteriores as the same has been conducted is gross violation of rules framed under the West Bengal Board of Secondary Education Act.

b) for permanent injunction restraining the present managing committee to reconstitute the Managing Committee without the process of law.

c) for all cost of the suit.

d) for any other relief or reliefs as the Ld. Court may deem fit and proper to which the Plaintiff may be entitled to.

2. In connection with such suit, an application under Order 39 Rules 1 and 2, CPC (hereafter the Code) was filed by the opposite party.

By an ex-parte order dated 1.10.2010, the Trial Court ordered as follows:

Hence

it is ordered

that in instant application under Order 39 Rules 1 and 2 read with Section 151 of the CPC Code, both parties to the application are directed to maintain status quo over the existing nature and character of the Managing Committee without and/or till their being heard on contest over the application for Temporary Injunction. Meanwhile Plaintiff to file requisites for issuance of notice upon Defendants asking them to show cause by 30-11-10 as to why the application for Temporary Injunction should not be heard against them. To date for S/R and appearance. Plaintiff directed to comply with provisions of Rules 3(a) and 3(b) of Order 39 CPC Code.

3. The Petitioners, who are Defendants 1 and 3 in the suit, carried the order dated 1.10.2010 in appeal, registered as Misc. Appeal No. 51/2010, in the Court of the learned Civil Judge (Senior Division) at Asansol. In connection with such appeal, an application for stay of operation of the order dated 1.10.2010 was filed. The Appellate Court took up the stay application for consideration on 6.10.2010. Since the Respondent in the appeal (opposite party herein) had filed a caveat and he had not been served, the Appellate Court was of the view that it would not be proper to hear the prayer for stay ex-parte. Accordingly, it directed issuance of notice upon the Respondent in the appeal within 10 days asking him to show cause why the prayer for stay shall not be allowed and fixed 8.11.2010 for hearing of such prayer.

4. Order dated 6.10.2010 of the Appellate Court declining stay of the order under appeal dated 1.10.2010 is the subject matter of challenge in the present application under Article 227 of the Constitution dated 26.11.2010, at the instance of the Defendants 1 and 3 in the suit.

5. Mr. Chatterjee, learned advocate representing the Petitioners contended that the suit filed by the opposite party is not maintainable in law having regard to the provisions contained in the "procedure for holding elections" framed by the West Bengal Board of Secondary Education (hereafter the Board) and, therefore, the Trial Court committed gross jurisdictional error in directing status quo which, in effect, has stalled the process of election and the Managing Committee of the

school could not be reconstituted. He relied on the decision reported in 2002 (2) CHN 122 in support of his submission that if the suit itself is not maintainable, there is no question of granting any order of injunction. He, accordingly, prayed for setting aside of the order of injunction and for leave to complete the election.

6. Mr. Chatterjee, learned senior advocate appearing for the Plaintiff/opposite party No. 1 contended that this Court, on facts and in the circumstances, ought not to interfere. According to him, the Appellate Court did not commit any illegality in deferring hearing of the prayer for stay on the ground that the caveator had not been served. It was his further submission that instead of approaching the higher courts, the Petitioners ought to have approached the Trial Court for a decision on the application under Order 39 Rules 1 and 2 of the Code. He, accordingly, prayed for dismissal of the application.

7. This Court has heard learned advocates for the parties and considered the grievance of their respective clients.

8. The "procedure for holding elections" framed by the Board, in terms of power conferred by Rule 9 of the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 (hereafter the said Rules) is a self-contained code. It provides in substantial detail how an election for reconstitution of a managing committee of a school, to which the said Rules apply, is to be conducted. Paragraph 34 of the procedure provides a forum (read the Board) where any doubt or dispute in respect of an election process at any stage could be raised and that such decision would be final.

9. Any matter, which has the effect of vitiating an election, should be brought up only at the appropriate stage in an appropriate manner before a Special Tribunal and should not be brought up at an intermediate stage before any Court is settled law. Ordinarily, when election process has commenced, a Court of law does not interfere with the same until such time the result of election is declared. Having regard to the procedure framed by the Board whereby a special forum is provided for adjudication of election disputes and the settled legal position, it does appear that the Trial Court erred in stalling the process of election by passing an order for maintenance of status quo.

10. True it is, the Appellate Court did not consider the prayer for stay on the ground that the caveator was not served and that the order does not suffer from apparent infirmity for which it is liable to be interdicted, as contended by Mr. Chatterjee, learned senior advocate, but at the same time it has not been disputed by him that in exercise of power of superintendence it is the duty of this Court to keep the subordinate courts within the bounds of their authority. Section 9 of the Code debars a civil court from taking cognizance of a suit, which, inter alia, is impliedly barred. The language in which paragraph 34 of the procedure is couched does warrant acceptance of the argument on behalf of the Petitioners that a civil suit would not lie without there being a decision of the Board on an appropriately raised election dispute. I need not express any opinion here as to

whether a civil suit would at all lie against a final order passed by the Board while disposing of an election dispute in exercise of power conferred by paragraph 34. Suffice to hold, under Article 227 of the Constitution, this Court may interfere in a case where the subordinate court has passed an order in ignorance of a provision that has been framed in exercise of power conferred by a statute, thereby rendering its decision perverse. Then again, power under Article 227 may be exercised suo motu and if the order dated 1.10.2010 had come to this Court's notice aliunde, interference would have followed without much ado. The Appellate Court despite not having touched the order under challenge on the ground that the caveator had not been served, it is no ground to preclude this Court from rendering justice to the parties upon hearing them. Mr. Chatterjee, learned senior advocate practically had no answer to the contention of Mr. Chatterjee, learned advocate that the opposite party ought to have approached the Board if at all he was aggrieved with the process of election.

11. The order of the Trial Court dated 1.10.2010 cannot be retained on record and is, accordingly, set aside. The authorised election officer shall be entitled to take further steps strictly in accordance with law for the purpose of reconstitution of the Managing Committee of the school by 31.3.2011. After the election is conducted and the Managing Committee is reconstituted, it shall be open to the opposite party to pursue his remedy in accordance with law.

12. The application stands allowed without any order for costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties at an early date.