

(2005) 02 CAL CK 0008
In the Calcutta High Court
Case No : Writ Petition No. 3528 (W) of 2005

Himadri Sekhar Biswas and Others	Vs	APPELLANT
Behala College and Others		RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2005) 4 CHN 68

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Kalyan Bondyopadhyay Kishore Dutta and Indrani Mitra, for the Appellant; Raja Basu Chowdhury and Arup Bhattacharyya, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The three writ petitioners are students of the first respondent (a college). By this writ petition they seek a writ of mandamus commanding the second respondent, the Principal of the college, to rescind the election notice dated February 10th, 2005, and the notice fixing the election programme dated February 15th, 2005.

2. There is no dispute that the election of class representatives to form the students' union, 2005 is held in terms of the constitution of students' union of the college; and that such constitution has no force of law.

3. Counsel for the petitioners argues that the steps taken by the Principal for holding the election have public law element and public character with an imprint of public interest. In support of such contention he cites to me the Apex Court decisions in L/C of India v. Consumer Education & Research Centre, AIR 1985 SC 1811 (para. 28), and Union of India (UOI) and Another Vs. S.B. Vohra and Others, .

4. I agree with him that any action taken by any person is open to judicial review by the Writ Court, if such action has a public law element or a public character

with an imprint of public interest. The authorities cited to me clearly support this proposition.

5. But I am unable to agree with him that in the present case steps taken by the Principal in connection with the election of students' union of the college involve any public law element or have any public character with an imprint of public interest.

6. In my view, steps taken by the Principal in terms of the constitution, which admittedly has no force of law, do not affect the public at large, and they are likely to affect, if at all, only the students of the college. To my mind, an action taken on the basis of an instrument that has no statutory force cannot be described as an action affecting the public at large, unless it is directed against the public at large.

7. I am therefore of the opinion that students of the college cannot invoke the writ jurisdiction asking juridical review of the impugned decisions of the Principal on the ground that they have a public character with an imprint of public interest. *

8. Counsel for the petitioners argues that provisions of the constitution are supposed to be rigorously followed by the Principal of the college. For this he refers me to the Apex Court decision in B.S. Minhas Vs. Indian Statistical Institute and Others, .

9. I am sorry that I am unable to agree with him that the proposition of law explained in the authority relied on would apply to the present case. In that case it was found that the institute governed by the Indian Statistical Institute Act, 1959 was also governed by its memorandum, regulations and by-laws in the conduct of its affairs. In such context Their Lordships held that procedure prescribed by the by-laws were supposed to be followed by the institute, this is not the case here. In this case the Principal is not supposed to follow the provisions of the constitution in the conduct of affairs of the college.

10. Next argument of counsel for the respondents is that the scope of power of the Writ Court under Article 226 is very wide as was held by the Apex Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, .

11. There can be no dispute that the power under Article 226 is very wide and the term "authorities" used in it must receive a liberal meaning unlike the term in Article 12. But the whole question is what actions are sought to be challenged before the Court and who has taken such actions.

12. To my mind, actions taken by an authority, which are not statutory or which are not taken by him in performance of any public function or in discharge of any public duty, are not open to challenge by the aggrieved persons before the Writ Court, though such persons may have adequate remedy before appropriate forum.

13. Last contention of counsel for the petitioners is that on the facts of the case the Principal has taken an unreasonable decision regarding the election. He reads statement made in para. 33 of the writ petition and comments on the notified election programme by saying that the Principal fixed the unreasonable election programme (because the students are supposed to take examination at the same time) to satisfy certain unreasonable demands made by a section of the students of the college.

14. He cites to me the Apex Court decision in Commissioner of Income Tax, Bombay and Others Vs. Mahindra and Mahindra Limited and Others, .

15. I regret that I do not see how the authority referred to can be applied to the present case. In view of what I have already said, I think, it will not be proper on my part to make any comments regarding allegations made by the petitioners that actions taken by the Principal are unreasonable. I am of such view, because I have found that the petitioners are not entitled to invoke the writ jurisdiction with their grievances, and hence I am not supposed to express my opinion regarding the merits of the allegations made.

16. For these reasons I am of the view that the writ petition should be dismissed and accordingly I dismiss it.

17. In the facts and circumstances of the case, there will be no order for costs in it.

18. Urgent certified xerox copy of this judgment and order shall be supplied to the parties, if applied for.