
(1991) 02 CAL CK 0065
In the Calcutta High Court

Mahadeb Khan and Another	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 04-02-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 CALLT 66

Hon'ble Judges : Khwaja Mohammad Yusuf, J

Bench : Single Bench

Advocate : Bhudeb Bhattacharyya, J. Islam, Prabhat K. Chattapadhyaya and Panchanan Khatna, for the Appellant; Ranabijoy Bhattacharyya, Dipti Bhattacharyya and Ekramul Bari for the Respondent Nos. 5, 6 and 8 to 13, for the Respondent

Judgement

Khwaja Mohammad Yusuf, J.—The two writ petitioners are the Members of the Managing Committee of the Malidaha High School in the district of North 24-Parganas. The fact, in short, is that the said School was established by the local people and is a recognised and aided one. With the permission of the Director of School Education a clerk was appointed but a Class IV staff was not appointed since 1986. On 4th August, 1990 the Managing Committee of the School formed a Selection Committee for the selection of a Class IV staff. It is alleged that the Secretary of the School was not satisfied with the Selection Committee as it did not consist of the persons favoured by him and as such he wanted to do away with the resolution forming the Selection Committee on 4th August, 1990. The Secretary convened another meeting on 17th August, 1990 but it was not convened after serving a clear seven days" notice which is mandatory under the Statute and there was no item on the agenda to cancel the previous Selection Committee but when the resolution relating to the formation of the Selection Committee was taken up for confirmation the said resolution No. "2Kha" was not confirmed without assigning any reason. It is further stated that without confirming the said resolution relating to the Selection Committee in the meeting of 17th August, 1990, another meeting was convened on 31st August, 1990 and

the notice of the same was not served upon the three members including the petitioners, even the Headmaster who is a Joint-Secretary was not served with the notice. In the meeting held on 31st August, 1990 a fresh Selection Committee was formed with persons favoured by the Secretary. The contention of the petitioners is that the meeting held on 17th August, 1990 and 31st August, 1990 were wholly illegal and without jurisdiction. Thereafter the new Selection Committee took interview and selected one Ashim Kumar Mondal as No. 1 in the Panel for the post of Class IV staff. It is the apprehension of the petitioners that the Secretary who have played foul might forward the recommendation of the Selection Committee to the District Inspector of Schools (S.E.), North 24-Parganas, any time for approval. It is the contention of the petitioners that unless the selection made by the Selection Committee is quashed the School will suffer irreparable loss and injury. Hence the writ petition.

2. No Affidavit has been filed by the private-respondents but exhaustive arguments were made and they filed written submission.

3. The first argument of Mr. Islam on behalf of the petitioners was that a writ lies against Managing Committee of the School though no prayer has been made against any State-respondents. In this connection he cited the case of Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others, wherein it was decided that Higher Secondary School though run by private trust receiving hundred per cent grant from Government is amenable to writ jurisdiction. In this case Section 28(2)(d) of the M. P. Madhyamik Siksha Adhiniyam, 1965 and Regulations framed thereunder were in question and it was held that the service of the Principal of the School was terminated in breach of Reg. 79. He also referred to the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, where the Supreme Court held that 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. The point of Mr. Islam is to bring home the point that writ lies. The maintainability of the writ was not challenged by the private-respondents on the grounds as contented by Mr. Islam but on some other grounds which I shall deal afterwards. The learned Counsel for the petitioners has placed Rule 16 of the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 which clearly says that "Not less than seven days notice of the meeting shall ordinarily be given". On the basis of Rule 16 he submitted that the second meeting of 17th August, 1990 being Annexure "B" to the writ petition was bad in accordance to Rule 16 though the petitioners were present, and he cited Kiran Singh and Others Vs. Chaman Paswan and Others, which deals with the unamended Sections 9 and 21 of the CPC and Section 11 of the Suits Valuation Act, 1887. It was held that decree passed without jurisdiction is a nullity. On this point he cited two more cases reported in Som Raj and others etc. Vs. State of Haryana and others, and Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, In the first case Their Lordships of the Supreme Court while discussing the Rule of Law said that

discretion means sound discretion guided by law or governed by known principles of rules not by whim or fancy or caprice of the authority. But at the same time Their Lordships categorically stated that the validity of the Rules have not been questioned in this case. While in the second case Their Lordships emphasised to act with fairness in administrative action and one must take a decision in accordance with the provisions of the Act and Statutes and must not be guided by extraneous or irrelevant consideration. Mr. Islam submitted that the deficiency of seven days" notice makes any decision taken in the Managing Committee bad in law and though the petitioners raised objection in that meeting to this effect but they were overruled. He further submitted that arbitrary decision was taken by reversing the decision of formation of the Selection Committee and so far as the third and last meeting held on 31st August, 1990 was concerned the notice was not served upon several members. In conclusion he cited the case of *Jai Charan Lal Vs. State of U.P. and Others*, wherein the Supreme Court held that according to Section 87-A(3) of the U.P. Municipalities Act, 1916 there was no breach of provisions of the Act as seven clear days intervened between date of despatch of notice and date of meeting. It is further held that the important or material date according the provisions of that Act was the date of despatch of notice and not the date of its receipt. So far the *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, is concerned and as referred to by the learned Advocate, I do not think it requires discussion as it totally deals with a different subject matter though construction was involved there and test of eligibility laid down was an objective test and not a subjective one.

4. Mr. Bhattacharyya, the learned Advocate appearing for respondents Nos. 5, 6, 8 to 13, submitted that three meetings of the Managing Committee of the High School were held : First, on 4th August, 1990 in which the Selection Committee was constituted by majority votes ; the second meeting was held on 17th August, 1990 in which the resolution adopted for constituting the Selection Committee at the previous meeting was not confirmed but cancelled and all the eleven members were present in the second meeting; and the third and last meeting in question was held on 31st August, 1990 in which some members could not attend due to non-receipt of notice. Mr. Bhattacharyya summarised the contention of the petitioners as : (a) non-compliance of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 by not giving seven clear days notice; (b) there was no agenda for cancellation of the Selection Committee; (c) no reason was stated for cancellation; (d) there was violation of principles of natural justice; (e) in the last meeting of 31st August, 1990 three members were not served at all with notice; and (f) no selection of a new Selection Committee could be made without cancelling the resolution constituting the Selection Committee at the meeting of 4th August, 1990. The learned Advocate also submitted that the petitioners contended that there was no illegality or infirmity whatsoever in the last two meetings held on 17th and 31st August, 1990.

5. The learned Advocate of the private-respondents contended that as members

of the Managing Committee the petitioners cannot move any writ petition against any resolution of the Managing Committee as they have no locus standi to move any writ petition save and except under Rules 10(2), 11 and/or 13 of the said Rules of 1969. As all the members including the petitioners have exercised their legal right and took deliberations in the second meeting the defect of the notice was automatically cured by waiver and as such the decision taken was valid according to Rule 21 of the said Rules. He contended that there was no violation of the principles of natural justice and the way of conducting the meeting was not open to judicial scrutiny.

6. To bring home the point that the petitioners have no locus standi he tried to convincingly cite the following cases in support of his contention; (i) The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, ; (ii) Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College, , and not Sunder Singh and Others Vs. The State of Punjab, which has been wrongly referred to; (iii) Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, ; (iv) Dr. Umakant Saran Vs. State of Bihar and Others, ; (v) S.P. Gupta Vs. President of India and Others, ; and (vi) Syed Fatehyab Ali Meerza v. Union of India and Ors. reported in 1990 CRI LJ 411. I add one more case in the list on the point of locus standi and legal right and that is the decision reported in State of Orissa and Others Vs. Rajasaheb Chandanmull Indrakumar (P) Ltd. and Others,

7. Mr. Bhattacharyya then shifts to the validity of the meeting held on 17th August, 1990 when all the members were present and the petitioners No. 1 and 2 raised the question of the validity of the meeting but on explanation given by the Secretary all accepted his contention. According to the learned Advocate the members who raised objection waived their right to challenge the said meeting. In this connection he cited a Division Bench decision of Calcutta High Court reported in 5 CRILJ 148 (Manindra Chandra Nandi v. The Secretary of State for India-in-Council) wherein it was held that "It is well-settled, that if provisions of law are waived in the course of a trial, they cannot afterwards be set up by way of objection to any step taken or about to be taken open the footings of the waiver.....". He also cited in this connection the decision in the case of The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others, . Here before the Supreme Court the only defect was that the matter was not included in the agenda of the meeting. It was held in this case that if a person who was not noticed appears at the meeting and waives the irregularity, the defect is cured. This decision is actually based on the case of Young v. Ladies Imperial Club Ltd. reported in (1920) 89 KB 563 (E). One more decision cited by him on the point is that of Jhaman Lal Vs. The State of Rajasthan and Others, Here the Rajasthan High Court while dealing with the Rajasthan Municipalities Act, 1959 and the Rajasthan Municipalities Appointment of Members/Councillors by Co-Option Order, 1959 with special reference to Rule 3(1) relating to co-option of members said that the Rule mentioning seven days clear notice of meeting for co-option of members is directory and not mandatory and thus the petitioners were not

prejudiced in any way and the meeting was held valid and relied upon the principle laid down in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya*,

8. Mr. Bhattacharyya's next argument was that in the meeting held on 17th August, 1990 the resolution in dispute was cancelled in accordance with law because a former proposal for cancellation of the Resolution was moved by one Animesh Mondal and supported by four other members. His further point is that nobody including petitioners raised any objection but it is admitted by the learned Advocate that one Trilokyanath Mondal raised objection of justification which was overruled and this could not be taken as an objection against placing a proposal without agenda. His argument is that the resolution in question was cancelled by a regular motion in conformity with the law as laid down under Rule 21. He also claimed that the meeting held on 31st August, 1990 was legal because the petitioners intentionally evaded service. He emphasised that the Writ Court is not the court of appeal and as such it should not go into the facts. Further he submitted that the Minutes of a meeting require confirmation but the resolution remains incomplete in the eye of law till it is confirmed and as such no writ of mandamus can be attracted to an incomplete resolution. As such on the basis of the aforesaid argument he prayed for dismissal of the writ petition.

9. Mr. Bhudeb Bhattacharyya, the learned Advocate appearing for the State-Respondents, supported the maintainability of the writ petition and cited AIR 1989 SC 88 (*All India Sainik Schools Employees Association v. The Defence Minister-cum-Chairman, Board of Governors, Sainik School Society, New Delhi and Ors.*) but it need not be discussed as it is not very relevant for the instant writ petition.

10. I have considered the facts of the case and the points raised during argument by the parties. The preliminary point raised by the private-respondents is that the writ application filed by the petitioners is not maintainable because they have no locus standi and in this connection Mr. Bhattacharyya cited a series of decisions referred to hereinbefore to which I have also added one more. The views expressed in the decisions cited on the point by Mr. Bhattacharyya lead to the sole conclusion that one must have legal right to move the writ jurisdiction otherwise one has no locus standi to move such an application. Apart from those cases cited by Mr. Bhattacharyya there are other cases as well both of various High Courts and the Supreme Court where the point has been made clear and unambiguous. But one must have in mind the basic principles that to act with fairness in administrative action one must take a decision in accordance with the provisions of the Acts and Rules and must not be guided by extraneous or irrelevant consideration. This is the view expressed by the Supreme Court in the case of *Km. Neelima Misra v. Dr. Harinder Kaur Paintal and Ors.* (supra). Merely by the fact that all the Members of the Managing Committee of the School were present in the meeting of 17th August, 1990 when the resolution adopted on 4th August, 1990 constituting the Selection Committee was given a go-by without

confirmation takes away the right of the petitioners from moving the writ jurisdiction is not convincing to me because it is expressly admitted by the private-respondents that one Trilokyanath Mondal demanded justification of the proposal to cancel the resolution in question. This indicates that there was an objection in the said meeting but he was overruled and the motion cancelling the resolution in question was carried out. Mr. Trilokyanath Mondal "demanded justification" meant that he demanded justification of cancellation of the resolution which was formerly proposed by one Animesh Mondal and others once adopted by the Managing Committee and now it was going to be cancelled without being confirmed. One must not think that any resolution adopted by a legally constituted statutory body spends its force automatically. Rule 21 of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 directs that the President of the Committee requires the consent of three-fourths of the members present to take up any item not set forth in the business of the meeting to be transacted except those as indicated in the said Rule. This Rule 21 must be read with Rule 25(1) which obviously is a condition precedent. The relevant portion of Rule 25(1) says : "The record of each meeting shall be confirmed at the subsequent meeting." This Statutory Rule was violated while cancelling a resolution of the previous meeting in question before cancelling the same. The very purpose of confirmation is verification of correct recording. Shackleton on the "Law and Practice of Meetings" (6th Edition, 1977) says as under ; "It (confirmation) is commonly used in that sense at meetings of public bodies, who confirmed the Minutes of their last meeting, not meaning thereby that they give them force, but merely that they declare them accurate" (R. v. Mayor of York, (1853) 1 E & B 594). The decision once arrived at does not need confirmation to give it legal enforcement but to examine its accuracy. So far as Rule 25(1) of the Rules of 1969 is concerned it has expressly stated that the record of each meeting shall be confirmed at the subsequent meeting and this Statutory Rule is binding upon the Managing Committee as mandatory procedure and without confirmation of the Minutes of the last meeting the subsequent meeting cannot go to discuss the previous recorded Minutes. The moment this right is infringed under the Statutory provision, a person gets the locus standi and a legal right to move the writ court, it matters little whether he is a Member of the Managing Committee and attended the meeting which infringed statutory rule.

11. I am of the view that by by-passing Rule 25(1) of the Rules of 1969 the Managing Committee has no right to undo a Resolution already adopted at its previous meeting. The purpose of confirmation is to see that the proceedings of the last meeting of the body have been correctly recorded and nothing else. Such confirmation is simply to scrutinize the correctness of the last proceedings of the meeting and nothing else. Only after confirming the last proceedings of the meeting the Managing Committee can proceed further on the basis of the agenda or the business of the meeting, otherwise not. So far the cancellation of any previous Resolution of the proceedings is concerned Rule 21 of the said Rules

may well be followed but in this particular case the position is somewhat different. Here one Trilokyanath Mondal demanded justification of cancellation of the last Resolution of the Managing Committee but disregarding his objection the Managing Committee cancelled the Resolution in question thereby acting against the spirit of Rule 21 of the said Rules. The explanation or reply of the Secretary whatever be the case cannot cure the by-passing of Rule 25(1) of the said Rules. Rule 21 refers to the consent of three-fourths of the Members present under normal circumstances only and not where an objection has already been taken by a Member on a particular Resolution which without being confirmed was going to be reversed. In the circumstances I hold that the petitioners' legal right as given by the Statutory Rules being the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 framed under the West Bengal Board of Secondary Education Act, 1963 give them locus standi to move the writ application the moment the legal right as given by law is infringed, and as such the writ application is maintainable. The cases cited on this point by Mr. Bhattacharyya only go to strengthen the maintainability of the writ petition.

12. The contention of Mr. Bhattacharyya that by attending the meeting of the Managing Committee held on 17th August, 1990 the petitioners have waived their right to challenge the proceedings of the said meeting. In this connection he strongly relied on a decision reported in 5 CLJ 148 (supra). A general principle of law has been elucidated in this decision of 1906-07 but the provisions of the Acts and Rules must also be considered to test whether the principle laid down in 5 CLJ 148 (supra) is applicable in the instant case when one's legal right is eroded. The case of the Vice-Chancellor, Utkal University and Ors. v. S. K. Ghosh and Ors. (supra) also does not fit in on the point of waiving the irregularity of the meeting. Here the irregularity is not only confined to the point of notice but something more and the mere presence of all the Members could not cure an inherent legal defect. The submission that the Resolution in dispute was cancelled by a regular motion in conformity with law is absolutely incorrect. The cancellation Resolution was carried out in the meeting of 17th August, 1990 contrary to the procedure laid down under the Rules and thereby violated Statutory provisions.

13. At the same time the contention of Mr. Islam that the meeting of 17th August, 1990 was bad because Rule 16 was not followed and no clear notice of seven days" was given is untenable. In this case it will be of interest to have a comparative study of Rules 16 and 17 of the said Rules of 1969. The Rule 16 runs as under : "Meeting of the Committee. A meeting of the committee shall be called by the Secretary at least once in every two months except during the vacation. Not less than seven days notice of the meeting shall ordinarily be given." Rule 17 of the Rules is as follows : "Special Meeting. A special meeting shall be convened by the Secretary within a fortnight when a requisition for such a meeting is made by not less than four members of the Committee. Not less than seven days notice of such meeting shall be given." Now a difference will be apparent in Rules 16 and 17. Rule 16 speaks of shall ordinarily whereas Rule 17

simply says shall. The significant word in Rule 16 is the word "ordinarily". The word "ordinarily" has different meanings in different context. In the "Shorter Oxford English Dictionary on Historical Principles" (Vol. 2, 1964) the meaning of the word has been made as "in conformity with rule" and also "in most cases; usually, commonly". This word gives a certain amount of elasticity to Rule 16 (refer to Rt. Rev. Aldo Maria Petroni v. Kesavan, 1964 Ker. LJ 1055). This principle is further elucidated in the case of Kailash Chandra Vs. Union of India (UOI), . In the case of Jai Charon Lal Anal v. State of U.P. and Ors. (supra) referred hereinbefore the provision of Section 87-A(3) of the U.P. Municipalities Act, 1916 was totally different from Rule 16 of the instant case and there cannot be any comparison. The word "ordinarily" as used in Rule 16 is directory and not mandatory in nature.

14. So far as the last meeting of 31st August, 1990 is concerned it is admitted position that the notice of this meeting was not served upon some members and only seven Members were present. The contention of Mr. Islam on the point is quite weighty and the decision taken for the constitution of a fresh Selection Committee in the meeting is inconsistent with legal procedure as discussed above. Mr. Bhattacharyya's submission that the petitioners intentionally evaded service cannot be relied upon on its face value. Whatever might be the position the meeting held on 31st August, 1990 was prime facie bad, not only on the ground of non-service of the notice to all the Members of the Managing Committee but also constituting a fresh Selection Committee by illegal methods without complying with the provisions of the said Rules of 1969. There is no logic in the contention of the learned Advocate for the private-respondents that Rule 25(1) of the said Rules regarding confirmation was still under process and the Resolution remained incomplete in the eye of law till it was confirmed.

15. I must make it clear that the Resolution constituting the Selection Committee in the meeting of 4th August, 1990 is not sacrosanct and never above cancellation or revocation but the same must be done in accordance to the Rules and Procedures. Here a wrong procedure was adopted contrary to the Rules and without confirming the Resolution in question passed on 8th August, 1990, it was cancelled at the Managing Committee's meeting held on 17th August, 1990 without any such item on the business of the meeting and thereafter on 31st August, 1990 a new Selection Committee was formed disregarding the fact that the notices were not served properly upon the Members. In my view the petitioners are entitled to get an immediate relief.

16. In that view of the matter the Resolution adopted for cancellation of the first Selection Committee at the meeting held on 17th August, 1990 and the formation of the new Selection Committee at the meeting held on 31st August, 1990 are illegal and hereby set aside and quashed. The Resolutions adopted relating to the formation of the Selection Committee at the meeting held on 4th August, 1990 stands. However, the Managing Committee of the School must first confirm the Resolution adopted about the constitution of the Selection

Committee at its meeting of 4th August, 1990 and then will be at liberty at a subsequent meeting with a fresh item on agenda on the subject to adopt any Resolution of its choice in accordance with law on the Resolution in question adopted on 4th August, 1990.

17. The writ application is accordingly disposed of without costs.

Let xerox copy of the order be made available to the parties on usual undertaking and upon compliance of necessary formalities.