

(1954) 03 CAL CK 0028
In the Calcutta High Court
Case No : Civil Rule No. 1888 of 1953

Makhanlal Chakravarty

APPELLANT

Vs

S.K. Chatterjee and Others

RESPONDENT

Date of Decision : 02-03-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35

Constitution of India, 1950 — Article 226

West Bengal Secondary Education Act, 1950 — Section 31, 36, 36(2), 37

Citation : AIR 1955 Cal 72 : 58 CWN 617

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Arun Kumar Dutta, for the Appellant; A. Ray and Nani Coomar Chakrabartty, for the Respondent

Judgement

Sinha, J.—The facts in this case are as follows. There is a School at Kanchrapara, in the 24-par-ganas, known as the Kanchrapara Boys' High School. It was established in 1949, and provides educational facilities for children of refugee families. I am told that the present roll-strength is well over seven hundred. It was commenced in hogla sheds, but now owns a pucca structure, a substantial part of the cost of which was borne by the Government of West Bengal in its Refugee Relief and Rehabilitation department. The School was being administered by a managing committee of which the petitioner was the Secretary. This managing committee was constituted on 10-4-1949. The school received provisional recognition from the University of Calcutta for two years from 1-1-1949 to 31-12-1950, with permission to present candidates at the Matriculation examination in 1950 and 1951. On or about 10-3-1951, the Syndicate of the Calcutta University passed a resolution, granting a conditional recognition to the school from 1-1-1951 to 31-13-1952.

In 1950 the" West Bengal Secondary Education Act 37 of 1950 had come into operation (It came into operation in September 1950) and on 19-3-1953, the Secretary to the Board of Secondary Education (hereinafter referred to as the

"Board") wrote to the petitioner that the president had granted an extension of recognition to the school for one year commencing from 1-1-1953, with permission to present candidates for the School Final examination 1954. This was also subject to conditions. On or about 26-7-1951, the president of the Board had issued a circular that schools asking for recognition for the first time should constitute their managing committees according to the provisions of the revised School Code, but in Schools where reconstitution of the managing committee was due under the revised Code, the existing managing committees should function until further instructions. On 19-1-1953, it was further notified that if the existing managing committee had been approved by the Calcutta University, it should continue to function unless the Board directed it to be reconstituted.

The managing committee which was running the school was of course approved by the Calcutta University. Certain complaints were received by the Board about the Headmaster and the members of the managing committee and Mr. Surendra Chandra Chakravarty the officiating Assistant Director, Public Instructions, Government of West Bengal, was deputed by the president to inspect the school and make enquiries. He made two visits to the school, one on 6-1-1953 and another on 11-1-1953. Complaints were also received by the West Bengal Government and an audit was made of the accounts,

2. On 11-2-1953, the Financial Adviser to the Refugee and Rehabilitation Department of the Government of West Bengal, made a report that the inspection of the accounts of the school disclosed a serious state of affairs. It was found that the school maintained no Cash Book, that the muster-rolls contained forged entries, that large sums were drawn for the girls' section even before it was recognised by the Board and no attendance register for 1950 at all was available for that section. There were irregular withdrawals and disbursement by help of issuing false certificates. Finally it was pointed out that Rs. 25,500/- had been sanctioned by Government of which Rs. 15,000/- had already been advanced. No tender even was invited for the construction.

3. Mr. S.C. Chakravarty made his report on 20-2-1953. He reported amongst other things that the existing managing committee was unconstitutional. The president of the committee had submitted his resignation in January 1951 as he had migrated to Calcutta and was not attending meetings. There were other members who were not entitled to be members or had ceased to have the requisite qualifications, but were still continuing to act as members. He further reported serious instance of mal-administration. For example, students were admitted in excess of the permissible limit with the result that classes were shown to exist, but no available space in which they could function, and the school professed to teach, subjects for which there were no teachers. The results were extremely curious.

It is mentioned that when the D. I. of Schools went to inspect the school, a whole section of boys was concealed from him, because there was no

accommodation for them. The School Registers were found to be defective, and it appeared that students were admitted to class X even after the Test Examination was over. Extensive malpractices were reported in the drawal of tuition fees. Regarding the secretary, it was reported that he was entrusted with the construction of the school building. No tenders were invited but a labour contractor was entrusted with the work. The same contractor was engaged to build a house for the Headmaster and for a member of the managing committee. The Secretary was unable to produce vouchers for large quantity of materials that were stated to have been used for the construction of the building. The report proceeds to say

"Sri M.L. Chakravarty is only a Matriculate and a person of doubtful integrity. It was most unfortunate that he was in charge of the construction of the school building."

Mr. Chakravarty recommended that the managing committee was acting perversely and should be removed and an ad hoc committee of seven persons should be appointed, consisting of the S. D. O. Barrackpore, the Chairman Kanchrapara Municipality, etc.

4. The report of Mr. Chakravarti was first considered by a sub-committee appointed by the Recognition and Grants Committee and thereafter by the Executive Council, which on 19-5-1953 resolved that an ad hoc committee should be appointed to remove the Headmaster and take steps to reconstitute the managing committee, strictly according to the provisions of the Revised School Code, by 31-8-1953. On 2-6-1953, the Secretary of the Board informed the petitioner that the President had directed that an ad hoc committee should be appointed to take charge of the administration of the school. The ad hoc committee was to consist of the S. D. O. Barrackpore, the president Kanchrapara Harnett High School, the District Inspector of Schools, 24 Parganas, the Principal Rishi Bankim Ch. Collage, Naihati, and the new Headmaster when appointed by the ad hoc committee. The ad hoc committee was directed to reconstitute the managing committee strictly according to the Revised School Code.

5. I am informed that the ad hoc committee has already taken possession and is running the school. The arrangements for reconstituting the new managing committee are nearly ready and the election will be held by end of March 1954.

6. This rule was issued on 29-6-1953 upon the respondents to show cause why a writ in the nature of mandamus should not be issued directing them to forbear from giving effect to the order dated 2nd June and/or why the said order should not be recalled, withdrawn or rescinded or why a writ in the nature of prohibition should not be issued prohibiting the respondents from proceeding with the said order or why further or other orders should not be made as to the Court seems fit and proper. The order for an ad interim injunction was refused. By an order dated 28-8-1953 the president of the Board was made a party to this application.

7. I have been addressed at length both on the facts and the law involved in this

case. In my opinion, I am not called upon to go into the disputed questions of fact. Upon the admitted facts, the only question of law that arises is as to whether under the West Bengal Secondary Education Act 37 of 1950, the Executive Committee of the Board was competent to appoint an ad hoc committee and take over the administration of the school.

8. The sections relied upon are Sections 36 and 37 and I set out below the relevant portions thereof:

"36(1) Subject to the provisions of this Act, the Board shall have power to direct, supervise, develop and control Secondary Education and to do all such acts as it may consider necessary for the purposes of such direction, supervision, development and control.

(2) In particular and without prejudice to the generality of the foregoing power, the Board may --

(c) supervise the administration of High Schools by means of inspection and the issue of directions;

(k) delegate any of its powers to the Executive Council, or, subject to the provisions of the Act, to any committee constituted under this Act;

37 (1) Subject to the provisions of Section 36, the Executive Council shall have power to

(k) take such disciplinary action as it thinks fit against High Schools, or teachers or students of such schools or, in accordance with such regulations as may be made on that behalf against the Secretary and other persons appointed by the Board".

9. By a resolution dated 25-7-1952, the Board delegated the following power to the Executive Council:

"The power to take such steps as may be necessary for the supervision of the administration of High Schools by means of inspection and issue of directions (as provided for in Clause (c) of Sub-section (2) of Section 36)".

10. Mr. Roy argues that the Executive Council by virtue of their own power derived u/s 37 (1)(k), could remove the old managing committee and appoint an ad hoc committee to take over charge.

11. Coming now to Section 36, it is clear that Sub-section (1) gives general power to the Board to direct, supervise, develop and control secondary education in general and in that behalf do all such acts as it may consider necessary for the purposes of such direction, supervision, development and control. Sub-section (2) merely gives illustrative examples of the powers mentioned in Sub-section (1).

12. That this is so is not disputed and cannot be disputed regard being had to the well known Privy Council decision AIR 1945 156 (Privy Council) and of the

Supreme Court, " Santosh Kumar Jain Vs. The State Union Of India (Intervener), .

13. The difficulty here is occasioned by the fact that the delegation of powers is not of those contained in Sub-section (1) but those contained in Sub-section (2) (c). There can be no doubt that under sub-section (1) the Board has been empowered to do "All such, acts as it may consider necessary for the purposes of such direction, supervision.....". Therefore, the removal of the existing managing committee and the. appointment of an ad hoc committee would be quite valid.

14. Sub-section (2) (c) deals with supervision of the administration of schools by means of inspection and the issue of directions. It is argued by Mr. Dutt that supervision means keeping a watch upon the existing administration and does not vest the Board with the power of removing an existing managing committee and appointing an ad hoc committee or reconstituting the old managing committee. I think that this is too narrow a construction of the word "supervision". What the supervision or direction is to consist of has not been laid down, but the meaning is quite clear from Sub-section (1). It is supervision and direction in the widest sense possible. The Board has been given the power to do all such acts as it may consider necessary for the purposes" of such direction and supervision and I do not think that it was used in any narrower sense in Sub-section (2) (c).

The object of the Act is to provide for the regulation, control and development of secondary education in West Bengal and the Board has been granted the widest powers necessary to carry out the object. If under Sub-section (1), the Board has wide powers in connection with secondary education in general, there is nothing to indicate that in dealing with schools, Sub-section (2) intended the powers to be any the less wide. Since Sub-section (2) is merely illustrative of the powers conferred by Sub-section (1), it must be interpreted in the same manner. That seems to be the clear intendment. I therefore hold that u/s 36 (2) (c), the board had the power to issue directions for removing a managing committee which has been, in its opinion, mismanaging the affairs of a secondary school and is not properly constituted, It has also the power to reconstitute the managing committee according to the rules and as an interim measure, to appoint an ad hoc committee to run the administration until the managing committee has been properly reconstituted. This power has been, validly delegated to the Executive Committee, and properly exercised by it.

15. In view of this finding, it is not necessary for me to deal with the powers of the Executive Committee u/s 37 (1) (k). I might mention however that the resolution of the Executive Council necessarily implied the removal of the existing managing committee, which is certainly a disciplinary action. But I am doubtful whether the appointment of an ad hoc committee can be supported on the plea of "disciplinary action". There must be some power to appoint such, a committee apart from the power of removing the existing one. Such a power can be found

in Section 36 (2) (c) of the Act.

16. Mr. Dutt argues that the appointment of an ad hoc committee could only be done u/s 31, but the present ad hoc committee has not been properly constituted because such a committee must consist wholly or in part of members of the Board, whereas the ad hoc committee that has been appointed has not got a single member of the Board in it. This argument is without substance inasmuch as Section 31 deals with the framing of committees of the Board itself, viz., the "Recognition and grants Committee", etc. An ad hoc committee is not a committee of the Board, but a committee appointed by the Board and working under its direction and control. There is no delegation of the Board's powers to any ad hoc committee. An ad hoc committee merely carries out the directions of the Board (or the Executive Council as the case may be).

17. Mr. Dutt next argued that the order was mala fide inasmuch as it was not really meant for reforming the school but for a collateral purpose. I have not at all appreciated this argument. Whatever be the legal position, I have not the least doubt that the Board and the Executive Council have been actuated by the best of motives, namely the good of the School. Some facts relating to the administration of the school during the regime of the outgoing committee are disputed, but even if we are to take the admitted facts, it makes a sorry reading. In attempting to set right matters, the Board is doing what was expected of it.

18. Finally Mr. Dutt referred to the proviso to Section 37, as amended by West Bengal Act 21 of 1951. He argues that inasmuch as the school was recognised in the directives of 26-7-1951 and 19-1-1953, it was no longer open to the Board to intervene and appoint an ad hoc committee. I have not appreciated this argument. The matter as it has shaped, is not one relating to recognition at all. The question now is as to the administration of the school. So far as I understand, the school continues to be recognised.

19. In view of my decision, I do not think it is necessary to deal at length with certain technical points raised by Mr. Roy. He has argued that there was no demand for justice, nor was it denied. It has now been held that if there was substantially such a demand and refusal, that would be sufficient. I think such a demand can be spelt out from the correspondence and the conduct of the respondents. Mr. Roy has also argued that the right of the managing committee was a private right and so could not be the subject-matter of a writ of mandamus. I do not think that would be the right way of looking at the matter, if a statutory body acts in excess of its jurisdiction, any one affected by it can certainly come up and ask that it should be compelled to restrict its activities within the four corners of the statute which has created it.

20. For the reasons mentioned above, this application fails and must be dismissed. The Rule is discharged. As the application involves the interpretation of a recent statute which has not yet been authoritatively interpreted, I make no order as to costs.