
(2002) 01 CAL CK 0023
In the Calcutta High Court
Case No : Writ Petition No. 14174 (W) of 2000

Managing Committee, Chetla Boys High School and Others	APPELLANT
Vs	
West Bengal Board of Secondary Education and Others	RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

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

Citation : (2002) 1 CALLT 330

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Suproakash Benerjee and Saikat Banerjee, for the Appellant; R.N. Ghorai and B.N. Roy, for the Respondent

Final Decision : Allowed

Judgement

P.K. Ray, J.—In this writ application, the Managing Committee of a school which was reconstituted in terms of the election held on 19.12.99, has challenged the decision of the President, West Bengal Board of Secondary Education dated 9.8.2000 as communicated by memo No. S/461/2 dated 9.8.2000 by the Secretary. West Bengal Board of Secondary Education.

By the impugned order, the President, West Bengal Board of Secondary Education, upon exercising his emergency power u/s 28(2) of the West Bengal Board of Secondary Education Act, 1963, appointed an Administrator in the management of Chetla Boys' High School. This order was passed by the President. West Bengal Board of Secondary Education (hereinafter referred to as the said President for the brevity) admittedly without hearing the Managing Committee which started to function with effect from 31.5.2000 upon holding office bearers election.

2. This writ application is being opposed by the West Bengal Board of Secondary Education and the Headmaster of the school in question. It appears from the impugned order that the said President passed the order holding, Inter alia, to

the effect;

"..... In compliance with the order of the Hon"ble High Court mentioned above and in consideration of the views of the D.S.E.I, President, West Bengal Board of Secondary Education in exercise of the powers conferred upon me u/s 28(2) of the West Bengal Board of Secondary Education Act, 1963, as amended and keeping in view the observation of Hon"ble Court at Calcutta, hereby appoint Sri. Jitendra Nath Goswami, A. I of School (SE). Calcutta to act as Administrator of Chetla Boys" High School, Calcutta-27 "

3. The order of Barin Ghosh, J, as relied upon was quoted as a reason for such appointment of Administrator.

4. It is submitted on behalf of the petitioner that on 19.12.99 election of guardians representative was held for reconstitution of Managing Committee, and thereafter election of teaching and non-teaching staff was held. Departmental nominee was placed on 25.2.2000 by the District Inspector of Schools (SE), Calcutta, and after completion of co-option of members ultimately the office bearers election was held on 31.3.2000. It is submitted that with effect from 31.3.2000 this Managing Committee is functioning. With reference to appointment of Headmaster in terms of the recommendation of the School Service Commission, the Managing Committee of the school did not allow joining of the said Headmaster which resulted in filing of a writ application, being W.P. No. 6541 (W) of 2000 by the Headmaster. In this Court, assailing the conduct of the Managing Committee. On 17.4.2000, the said writ application was disposed of by Barin Ghosh, J. holding, Inter alia, that the Managing Committee was bound to Issue appointment letter in favour of the Headmaster, the writ petitioner therein. However, while disposing of the said writ application of the Headmaster. Barin Ghosh, J. directed in the following manner:

"I, therefore, direct the Board of West Bengal Secondary Education to de-recognise the school and at the same time direct the Government of West Bengal to stop all grants in aid to the school in question unless within 14 days time the Managing Committee of the school steps out from its whims and gives appointment to the petitioner."

5. Challenging this order dated 17.4.2000, the Managing Committee of the school preferred an appeal, being M.A.T. No 1331. In connection with such appeal, an application for stay registered as C.A.N 3265 of 2000 was moved on 17.5.2000, when the appeal and the application both were disposed of by the Division Bench comprising of Ashok Kumar Mathur. Chief Justice and Altamas Kabir, J, upon affirming the views taken by Barin Ghosh, J. in the writ application. As a result of such, the appeal and the application both were dismissed. Within 14 days from the date of passing such order, that is 17.5.2000, giving finality of the direction of this High Court, the Managing Committee of the school took a resolution on 31.5.2000 to appoint the candidate concerned recommended by the school Service Commission, who is respondent No. 6 in this writ application,

as Headmaster of the school. The Headmaster Joined on 26.6.2000 and as an ex-office member of this Managing Committee, this Headmaster attended the meeting of Managing Committee on 30.6.2000 and other meetings thereafter. Hence, from the very conduct of the respondent No. 6. It appears that the respondent No. 6 became a member of the Managing Committee and accordingly such member of the Managing Committee cannot challenge the legality, validity and Constitution of such Managing Committee. This point has already been considered by the apex Court in the case of Bihar Public Service Commission and Another Vs. Dr Shiv Jatan Thakur and Others, holding, *inter alia*, that no member of a committee would be allowed to question the validity of correctness of the function performed or duties discharged by that body while he was its member. Admittedly, the respondent No. 6 in his status as Headmaster attended the meeting of the Managing Committee being an ex-office member, and admittedly as yet he has not filed any resignation letter from such Managing Committee. In that view of the matter, the respondent No. 6 has no *locus standi* to support the decision of the West Bengal Board of Secondary Education impugned in this writ application and/or to oppose the functioning of the present Managing Committee.

6. From the impugned decision, it appears that the said President. In passing the impugned order, relied upon the order dated 17.4.2000 passed by Barin Ghosh, J. and accordingly assigned a reason to that effect upon holding, *inter alia*, "keeping in view the observation of the Hon'ble High Court, Calcutta", while the impugned decision was passed. On a bare perusal of the order of Barin Ghosh, J. dated 17.4.2000, it appears that Ld. Judge never directed that West Bengal Board of Secondary Education and/or the President to supersede the Managing Committee. From the order it appears that Barin Ghosh, J, directed the West Bengal Board of Secondary Education to derecognise the school as well as to stop all grants in aid to the school with a rider that such action would be taken in the event within 14 days, appointment to the recommended candidate of the School Service Commission was not given. From the order it appears that on 17.4.2000, Barin Ghosh, J, passed the order and immediately prior to expiry of such 14 days, an appeal was preferred by the Managing Committee of the school and the appeal Court adjudicated the matter on 17.5.2000. No doubt technically since there was no stay passed by the Division Bench prior to expiry of such 14 days time granted by Barin Ghosh, J, but when an appeal was already preferred, which is a matter of right of the Managing Committee to test the legality and validity of the order passed by a single Bench of this Court, for all practical purpose it would be deemed that on the fate of such by appeal to Court's decision the matter should have been adjudicated. The appeal Court confirmed the views of the trial Court, and immediately within 14 days from such final decision of the appeal Court, the Managing Committee appointed the present respondent No. 6 in the post of Headmaster. In the order passed by Barin Ghosh, J. there was a direction for de recognition of the school and to stop all grants in aid, but it appears that even after appointment of the recommended candidate of the School Service Commission in the post of Headmaster by the Managing

Committee of the school and attending of meeting by such candidate after holding the post of Headmaster, the District Inspector of Schools concerned took a view against the Managing Committee on that issue which was also echoed by the Director of School Education, West Bengal. From the impugned order it appears that though Barin Ghosh, J, never directed to supersede the Managing Committee, and the condition precedent for applicability of the order of Barin Ghosh, J. was denial of the Managing Committee to appoint the recommended candidate in the post of Headmaster, but the said President without considering those paper and documents wrongly relied upon the judgment of Barin Ghosh, J, and accordingly took it as a ground to supersede the elected Managing Committee for appointment of Administrator. The appointment of an Administrator is controlled and guided under Rule 8 of the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 (hereinafter referred to as Management Rules 1969). Rule 8 of Management Rules 1969, reads as follows:

"8. Power of Executive Committee to approve and supersede Committee, to appoint Administrator or Adhoc Committee and to grant special Constitution.- (1) the Constitution of a Committee shall be subject to the approval of the Executive Committee and the Executive Committee shall have the power to supersede a Committee that has, in its opinion, not been functioning properly and to appoint an Administrator or an Adhoc Committee to exercise the power and perform the functions of the Committee:

Provided that before superseding a Committee under this rule the Executive Committee shall have due regard to the report of the Director and shall afford a reasonable opportunity to the Committee to present its case before the Executive Committee.

(1a) The Executive Committee shall have also power to appoint an Administrator or Adhoc Committee in respect of any Institution where the term of the Committee has expired, but the Committee has not been reconstituted for any reason whatsoever.

(2) An Administrator or an Adhoc Committee appointed under Sub-rule (1) or Sub-rule (1a) shall exercise the power and perform the functions of the superseded Committee or of the Committee whose term has expired, as the case may be, ordinarily for one year and the Executive Committee may, by order, extend. In special circumstances, the term of office of the Administrator or the Adhoc Committee, as the case may be, by a further period, not exceeding six months at a time so, however, that the total period shall not exceed two years and the Administrator or the Adhoc Committee, as the case may be shall take steps to reconstitute the Committee under these rules before the expiry of the term of office of the Administrator or the Ad-hoc Committee, as the case may be. In exceptional circumstances which are beyond the control of the Administrator or the Adhoc Committee, the term may, on the application of the Administrator of the Adhoc Committee, be extended by the Executive Committee for such

period as the Executive Committee deems fit.

(3) Notwithstanding anything contained in these rules, the Executive Committee shall have the power to approve, on the application of any institution or class of Institutions, of the special Constitution of a committee in favour of such Institution or class of Institution and in approving the special Constitution of a Committee, the Executive Committee shall pay due regard to the recommendations of the Director if any. While granting special Constitution in favour of an Institution or a class of Institutions, the Executive Committee shall ensure that representation of the members of the teaching and the non-teaching staff, guardians and the member nominated by the Director or an officer authorised by him in this behalf, is made according to Clause (111), Clause (v) and Clause (vi) of Rule 6:

Provided that if the Executive Committee is of opinion that a school enjoying special Constitution has not been functioning properly, the Executive Committee may, after paying due regards to the recommendations of the Director, if any, amend or withdraw such special Constitution of a Committee and in that event, the Executive Committee may, by order, appoint an Administrator or an Adhoc Committee, as the case may be, to exercise the powers and perform the functions of the Committee for such period as may be specified in the order.

(4) The Constitution of a Committee shall be forwarded to the Executive Committee through the Director whose observations shall be considered by the Executive Committee before the Executive Committee approves of the Committee."

7. In terms of the said Rule, under the proviso to Rule 8(1). It is mandatory that reasonable opportunity of hearing must be given to the Managing Committee before superseding it. Furthermore, to supersede a Managing Committee, power was vested to Executive Committee of the Board. In the Instant case, the Executive Committee of the Board has not taken any decision to supersede the Managing Committee and thereby to appoint an administrator, but the President of the Board has taken such a decision. It is now a settled legal position in terms of the "doctrine of limitation of exercise of statutory power" that statutory body must perform the duties in terms of the statute. It is already a settled legal position that an Individual can do whatever he likes save and except as are not prohibited under the law, but a statutory body only can act in terms of the statute and cannot act contrary to the statute. Reliance in this connection may be placed to the Judgment in the case of 40 CWN 70: AIR 1949 Cal 20:(1974) 1 SCC 506 and Article 335 of Statutory Interpretation of Crawford. Hence, the President of the West Bengal Board of Secondary Education had no power and Jurisdiction to supersede the Managing Committee, However, it has been argued by the learned Advocate of the West Bengal Board of Secondary Education that in terms of Section 28(2) of the West Bengal Board of Secondary Education Act, the President has got the emergency power to exercise any of the powers of the Executive Committee. The said provision as relied upon namely, Section 28(2)

reads as follows:

"28(2) The President may, in any emergency, exercise any of the powers of the Board or the Executive Committee provided however that he shall not act contrary to any decision of the Board or the Executive Committee and shall, as soon there after as may be, place a full report before the Board or the Executive Committee as the case may, be, of the action taken by him stating reasons therefor."

8. By catena of decisions of this Court it has now been a settled law that such emergency power of the President of West Bengal Board of Secondary Education was regulated and controlled only in respect of emergency situation. It has been held by this Court by several judgments that such power cannot be exercised ordinarily. Learned Advocate for the petitioners has relied upon a Judgment on such Issue based in the case of Md. Rabbul and Ors v. West Bengal Board of Secondary Education, reported in 1997(2) CHN 137. In the said Judgment, earlier Judgments of this Court were also relied upon. Hence, it is now a settled legal position that emergency power cannot be exercised unless there is an emergent situation. In the instant case, there is no whisper about such emergency in the impugned decision of the said President. In that view of the matter, the power exercised by the said President even upon taking resort to Section 28(2) of the said Act is not legally sustainable. Furthermore, even in exercising such emergency power the said President was required to follow the statutory provision under Rule 8 of the Management Rules, 1969, which categorically provides by using the word "shall", a mandatory provision, that the Managing Committee must be heard upon giving proper reasonable opportunity to present their case. In the Instant case, admittedly no such opportunity was given to the present Managing Committee, and in that view of the matter, the impugned decision is contrary to the statutory provision, being the first proviso to Rule 8(1) of the Management Rules, 1969. Accordingly, the impugned decision, since has been passed in violation of the mandatory statutory provision, the same is not maintainable.

9. Under such state of affairs and in view of the aforesaid findings, the impugned decision is set aside and quashed. The writ application is accordingly allowed. There will be no order as to costs.

10. It is submitted that in pursuance of the impugned decision which has been quashed by this Court, the Administrator has taken charge of the school. Since the appointment of the Administrator is quashed, the Administrator is directed to hand over the charge of the school to the Secretary of the present Managing Committee within a week from the date of communication of this order.

11. Since the learned Advocate of West Bengal Board of Secondary Education is appearing, he is also directed to communicate this order to the Administrator so that the charge is handed over to the present Managing Committee in terms of the order of this Court.

12. It is, however, clarified that the Executive Committee of the West Bengal Board of Secondary Education will not be prejudiced by this order to proceed in accordance with law against the Managing Committee on other grounds. If any, as per law, except the ground as has distant or proximate relationship with recommendation of Headmaster and his appointment as well as by referring the order of Barin Chose, J. which has been adjudicated upon in this petition by observing non-applicability of said order to supersede the Managing Committee. But in the event, the Executive Committee decides to proceed against the Managing Committee, it must serve all the documents, including the report of the District Inspector of Schools concerned as well as the Director of School Education upon the Managing Committee and other Interested persons for giving proper opportunity of hearing.

The Registry is directed to communicate this order to the Administrator, respondent No. 15 forthwith, by special messenger at the cost of the petitioners.

Xerox certified copy of the order, if applied for be supplied expeditiously,