
(2014) 06 CAL CK 0044
In the Calcutta High Court
Case No : W.P. No. 6872 (W) of 2014

Mitali Paul

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 2 CALLT 648

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Ranajit Chatterjee and Arijit De, Advocate for the Appellant; Partha Sarathi Bhattacharya and Santanu Kumar Mitra, Advocate for the Respondent

Final Decision : Allowed

Judgement

Debasish Kar Gupta, J.—This writ application is directed against an order passed by the West Bengal Board of Secondary Education in the matter of non-inclusion of the names of guardians of the students of primary section of Calcutta Airport English High School (H.S.). District Kolkata. The above school is an unaided English Medium Higher Secondary School recognized by the West Bengal Board of Secondary Education and West Bengal Council of Higher Secondary Education. It is an integrated school having roll strength of about 2500 in its three sections, i.e., Primary, Secondary and Higher Secondary having a common bank account. The school is lying and situated on a plot of land of Calcutta Airport Authority. It was established in the year 1972. The recognition of the above school was granted in the year 1978. The school building of the above school was reconstructed by the Calcutta Airport Authority.

2. According to the petitioners, the primary section was represented by elected representatives of teaching and non-teaching staff of the above section till 2007.

3. A group of guardians of students of the above school filed an application under Article 226 of the Constitution of India in the matter of A, Dasgupta v. State of

West Bengal & Ors. (in Re. W.P. No. 20414 (W) of 2006) alleging inaction on the part of the West Bengal Board of Secondary Education in considering their objection with regard to inclusion of the names of teachers of primary section of the above school, the petitioner in this writ application, in voters" list for participating in the election for reconstitution of the managing committee. The above writ application was disposed of on September 25, 2006 with a direction upon the West Bengal Board of Secondary Education to take a decision in the above matter within the period mentioned in the above order. By virtue of an order passed under memo No. 839/C-(Law) dated November 30, 2006 the West Bengal Board of Secondary Education arrived at a conclusion that the teaching staff of primary section of the above school were not entitled to participate in the election for reconstitution of managing committee of the above school.

4. The writ petitioners filed an application under Article 226 of the Constitution of India in the matter of Ms. Mitali Paul & Ors. v. State of West Bengal & Ors. (in Re. W.P. No. 10958 (W) of 2013) assailing the above decision of the respondent Board. The above writ application was disposed of on April 25, 2013 quashing and setting aside the aforesaid order dated November 30, 2006 of the West Bengal Board of Secondary Education after giving opportunity of hearing to all concern including the representatives of the petitioners. In compliance of the above order, the impugned order was passed by the West Bengal Board of Secondary Education under its memo No. 455/C (Law) dated August 16, 2013 directing inclusion of the names of guardians of the students of primary section of the school in voters" list for participation in the election of the managing committee for sending their representative in the reconstituted managing committee. Noteworthy, that the impugned order was silent with regard to the claim of the petitioners for inclusion of their names in the voters" list for participation in the above election.

5. By virtue of an order dated September 26, 2013 passed in the matter of Government of West Bengal v. Nimal Chakraborty & Ors. (in Re. M.A.T. 419 of 2013), the respondent Nos. 7 and 9 were appointed as administrator and his assistant respectively to look after the management of the above school including conducting of an election for reconstitution of the managing committee of the above school. The respondent No. 7 entrusted the responsibility of conducting the election for reconstitution of the managing committee of the above school upon the respondent No. 9. The respondent No. 9 issued a notice dated February 20, 2014 in the matter of inclusion of the names of guardians of the student of primary section of the above school for participation in the election for reconstitution of the managing committee. The above notice was issued by the respondent No. 9 on the basis of the order impugned to include the names of guardians of students of primary section in the voters" list under reference.

6. This subject matter of challenge in this writ application is the impugned order of the West Bengal Board of Secondary Education as also the above notice issued by the respondent No. 9 on the basis thereof. By an order dated February 28,

2014 passed in this writ application, the respondent No. 9 was allowed to conduct the election for reconstitution of the managing committee of the above school without prejudice to the rights and contentions of the parties in the writ application as also restraining the respondent No. 9 to publish the result of the above election till March 21, 2014. Subsequently, the above interim order has been extended till disposal of this writ application.

7. Having heard the learned Counsel appearing for the respective parties as also after considering the submissions made by the respective parties, I find that the respondent Board observed in the impugned order that the teaching and non-teaching employees of primary section of the above school enjoyed the benefit of participating in the election for reconstitution of managing committee of the above school since its inception. The claim of the petitioners that the primary section was an integrated part of the above school having common Bank Account, P.F. accounts, common class rooms and amenities as also participation of the teaching staff for electing representative in the managing committee till 2007 were also recorded in the impugned order. But in the concluding part of the impugned order the respondent Board directed the school authority to include the names of guardians of the wards of primary section of above school in voters" list. Though the claim of the teaching staff was under consideration of the respondent Board, no decision was taken by the respondent Board with regard to their above right.

8. It is the settled principles of law that in the event extraneous considerations are taken into account by the authority for deciding the issue leaving aside the relevant considerations, the decision making process of the authority requires interference in course of judicial review. Reference may be made to the decision of State of Uttar Pradesh and Others Vs. Maharaja Dharmender Prasad Singh and Others, and the relevant portions of the above decisions are quoted below:

60. "However, judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision-making process. In Chief Constable of the North Wales Police v. Evans refers to the merits-legality distinction in judicial review. Lord Hailsham said:

The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court.

61. Lord Brightman observed:

.... Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made...

And held that it would be an error to think:

.... that the court sits in judgment not only on the correctness of the decision-

making process but also on the correctness of the decision itself.

9. In view of the above settled proposition of law the impugned order requires interference in course of judicial review on the basis of the facts and circumstances of this case as discussed hereinabove.

10. After further consideration of the impugned order, I am of the opinion that the petitioners are entitled for incorporation of their names in the voters" list for election of reconstitution of managing committee of the above school. In view of the above it is not necessary at this stage to refer the above matter to the West Bengal Board of Secondary Education once again because no other alternative is left to the respondent Board but to direct the authority of the above school to incorporate the names of the petitioners in the voters" list under reference under the category which is relevant for the them.

11. Further, quashing or setting aside of the order impugned or the notice issued by the respondent No. 9 to allow the guardians to participate in the election under reference is not necessary for granting the above relief to the petitioners. The reason is this the claim of the petitioners has not been rejected by virtue of the impugned order. That apart, the impugned decision of allowing guardians of the wards of primary section of the above school does not warrant any alteration in view of the admitted fact that there is no challenge to the above decision of the respondent Board.

12. Therefore, taking into consideration the admitted fact of holding election of reconstitution of managing committee of the above school on March 2, 2014 in respect of all categories of voters other than category of voters in which petitioners belong, I direct the respondent No. 9 to hold the election of voters" under the category of teaching and non-teaching staff of the above school incorporating the names of the petitioners in the voters" list without further delay and positively within six weeks from date. The respondent No. 9 is further directed to declare the result of entire election after complying with the above direction as also to hand over the management of the above school to the reconstituted managing committee of the above school on the basis of the result of election. The petitioner is also directed to look after the management of the above school as a special officer till handing over the management of the above school to the reconstituted managing committee of the aforesaid school. The existing condition of payment of remuneration to the respondent No. 9 shall continue during the aforesaid period.

13. Considering the pre-occupation of the respondent No. 7 with other important professional works, he is released from discharging the function of "Administrator" of the above school after due appreciation of his functioning in the above office.

14. This writ application is, thus, disposed of. There will be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the

parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.