
(2018) 06 CAL CK 0218
In the Calcutta High Court
Case No : W.P.5809(W) of 2018

Mojibur Rahaman

APPELLANT

Vs

State Of West Bengal And Ors.

RESPONDENT

Date of Decision : 25-06-2018

Acts Referred:

Management of Sponsored Institutions (Secondary) Rules, 1972 — Section 10, 25
Constitution of India, 1950 — Article 226

Citation : (2018) 06 CAL CK 0218

Hon'ble Judges : SHEKHAR B. SARAF, J

Bench : Single Bench

Advocate : Malay Kr. Singh, Rakesh Singh, Syamal Kumar Das, Ajoy Barman
Roy, Smita Paul

Final Decision : Disposed Of

Judgement

This is an application under Article 226 of the Constitution of India wherein the writ petitioner has challenged the impugned Memo dated April 13,

2018 being annexure P10 to the writ petition that has appointed a person as the President of the Managing Committee in place and stead of the

petitioner. The facts of the case are as follows :-

a) On March 23, 2017 the Joint Secretary to the Government of West Bengal, appointed the petitioner as the President of the Managing Committee of

Titagarh Anjuman Gharibul Muslemeen High School HS, North 24 Parganas. The term of the said committee was for a period of three years;

b) Subsequently, on March 9, 2018 the Assistant Secretary, Government of West Bengal, School Education Department, Secondary Branch,

nominated a new President to the Managing Committee of Titagarh Anjuman Gharibul Muslemeen High School HS, North 24 Parganas in place of the

petitioner. The other members in the existing Committee were directed to continue as members of the changed Managing Committee.

Counsel on behalf of the writ petitioner submits that Rule 10 read with Rule 25 of the Rules for Management of Sponsored Institutions (Secondary)

Rules, 1972 (in short "the said Rules") requires the Government to follow a particular procedure for appointment or removal of a member of the

Managing Committee. It is his submission that cogent reasons are required to be given for the removal of the petitioner and appointment of another

person in his place, as without cogent reason his status, that he has obtained, would be demeaned. Counsel for the respondent authorities relied on an

order of the Coordinate Bench of this Court in W.P. 138(W) of 2015 (Md. Lukman Ali Vs. The State of West Bengal & ors.), wherein Hon'ble

Justice Dipankar Dutta had the occasion to deal with a *pari materia* case. Relevant portion of the order is provided below :-

"Mr. Bhattacharya, learned advocate appearing for the petitioner contends that before calling back the petitioner's nomination, he should have

been extended reasonable opportunity of defence. According to him, the petitioner had attained a status and he could not have been relieved of such

status without there being any misdemeanor on his part. I am afraid, the contention raised by Mr. Bhattacharya does not impress me. The petitioner

never questioned himself as to why he was nominated by the department in the first place to function as the President of the school. There is no

provision in the Rules for Management of Sponsored Institutions (Secondary) Rules, 1972 that once nominated by the department, the person

concerned would continue to function as the President of the Managing Committee for a particular period of time or that prior to calling back the

nomination, he has to be heard.

In my view, the Government having nominated the petitioner without putting him through any process of section must be held to have the right to call

back the nomination at will without attaching any stigma relating to the mode and manner of functioning of the Managing Committee, of which the

petitioner was the President. Since no legal right of the petitioner appears to have been infringed by reason of calling back the nomination without

attaching any stigma, I find no reason to interfere."

Counsel on behalf of the petitioner relied on a decision reported in A.I.R. 1989

S.C. page 1607 in the case of Shri Anadi Mukta Sadguru Shree

Muktajee Vandasjswami Suvarna Jayanti Mahotsav Smarak Trust and ors. Vs. V.R. Rudani and ors. to submit that the Writ Court has the power to

issue a mandamus to a public authority to compel performance of a public duty. He relied on the judgement to further submit that there is no limitation

for our High Courts to issue the writ in the nature of mandamus as Article 226 confers wide power on the High Courts to issue writs in the nature of

prerogative writs for the enforcement of any of the fundamental rights and for any other purpose. He has relied upon a decision reported in 2008(7)

Supreme 762 in the case of Nagar Palika Nigam Vs. Krishi Upaj Mandi Samiti & ors. to submit that the Court cannot read anything into a statutory

provision which is plain and unambiguous. He further submitted that the order in Md. Lukman Ali (supra) was an order passed in the year 2015 before

coming into effect of the second proviso to Rule 10 wherein the following has been stated :

“Provided further that notwithstanding anything contained in any other rule, nominating authority may recall any nomination of a person as

President or Person Interested in Education on the Committee of an Institution, before the expiry of the term of the Committee if such authority is

satisfied on the basis of any formal or informal information that the replacement of such person is in the better academic or administrative interest of

the concerned institution.”

According to learned Counsel for the petitioner, the above proviso makes it clear that if a nomination of a person is being recalled prior to expiry of the

term of the Managing Committee, the authority should be satisfied on the basis of any formal or informal information that the replacement of such

person is in the better academic or administrative interest of the concerned institution. According to him, the Memo dated March 9, 2018 fails to

satisfy the said proviso as no basis has been provided in the said Memo.

I have heard the submissions of the Counsel on behalf of the appearing parties and perused the materials placed before this Court. It is to be noted

that the amendment of Rule 10 that includes a new proviso does not provide for a hearing to be granted to the person who is being replaced. The

proviso only allows for a subjective satisfaction on the basis of formal or informal information for better academic or administrative interest. The

above satisfaction is to be arrived at by the authorities prior to recalling the nomination of the person. The case of the petitioner is based on the factual matrix that no reason has been provided to him for his removal.

In my opinion, the new proviso as amended does not require the Government to give specific reasons to the petitioner for the above change. It is to be

noted that the petitioner has been nominated by the Government without having gone through any process of selection and as such no vested right

accrues on him with regard to the continuation in such a post. In the present case, the petitioner has not completed his three years period starting from

March, 2017. According to me, the order passed by the Coordinate Bench of this Court in Md. Lukman Ali's case (supra) being *pari materia* to

the present case would be very much applicable in the present case. The addition of the proviso in Rule 10 only entails the Government to come to a

subjective satisfaction to the recalling a person who has been nominated. The same does not provide for giving the person being replaced a chance of

hearing nor is there any requirement to provide the said person with cogent reasons for the same. By the order dated March 9, 2018 the Government

has formed a new committee and the said Memo need not explain the reasons for the change in the committee.

The respondent authorities were granted time on June 8, 2018 to file a report in the form of affidavit detailing the basis of the "subjective

satisfaction" that was carried out prior to issue of the Memo dated March 09, 2018 (annexure P5 to the writ petition). Today, when the matter was

taken up, Counsel on behalf of the respondent authorities submitted that after going through the file they were unable to find any "subjective

satisfaction" arrived at by the respondent authorities prior to issue of the said Memo. Accordingly, Counsel on behalf of the respondent authorities

submits that this Court may pass an order allowing them the option for reviewing the matter at a later stage.

In view of the above, it is amply clear that the respondent authorities did not comply with Rule 10 of the said Rules. I, accordingly, set aside the

impugned order dated March 09, 2018 passed by the Assistant Secretary, School Education Department, Secondary Branch, Government of West

Bengal. The respondent authorities shall be at liberty to act in accordance with law with regard to reconstitution of the Managing Committee of the

said school. With the above observations, this writ petition is disposed of without however any order as to costs. Since no affidavit is called for, the allegations made in the writ petition are deemed not to have been admitted. Urgent Photostat copy of this order, if applied for, be given to the parties on usual undertaking.