

(1997) 05 CAL CK 0022
In the Calcutta High Court
Case No : Writ Petition No. 3232 (W) of 1990

Monaranjan Das and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-05-1997

Acts Referred:

Constitution of India, 1950 — Article 14

West Bengal Board of Secondary Education Act, 1963 — Section 19

Citation : AIR 1998 Cal 22 : (1998) 2 ILR (Cal) 72

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Saradindu Samanta, for the Appellant; S.B. Bhunia, (for No. 10-A) and P.K. Basu, for the Respondent

Final Decision : Dismissed

Judgement

Basudeva Panigrahi, J.—In the instant case, the writ petitioners have challenged the validity of the decision passed by the Executive Committee of the West Bengal Board of Secondary Education on 21st April, 1986 for changing the name of the educational institution basing on the notification of the West Bengal Board of Secondary Education as per Annexure "A" to the writ petition.

2. The petitioners themselves who claim to have vital interest in the institution, namely Kadambari Union High School, stated, inter alia, that the Kadambari Union High School (hereinafter referred to as School) was initially established as a middle English School about a century ago. In course of time, the said School was upgraded into a High School which had been recognised by the West Bengal Board of Secondary Education. Some of the petitioners have claimed themselves as guardians, few others as donors and founders.

3. It has been further slated that one Dr. Sachindra Nath Pradhan who was formerly a resident of Kadambari. P.S. Nandi gram, District Midnapore hatched a plan in collusion with the other opposite parties for changing the name of the School by offering a donation of one lakh rupees to the West Bengal Board of

Secondary Education. He had further offered one lakh to the Managing Committee as donation for renaming the School in the name of his father. The Headmaster and also the Secretary of the School. pursuant to such offer made by Dr. Pradhan issued a notice for convening a meeting on March 2nd, 1989 in the School premises as per Annexure "B". The petitioners and many others who have, inter alia, stated that it is a subtle device of Dr. Pradhan and the other members of the Managing Committee to change the name of the School. They issued Advocate's notice to the respondents and also to other authority. The petitioners had highlighted that since Dr. Pradhan is not a resident of the locality who is a citizen of America, not entitled to offer any donation to the School to commemorate the name of his father. But, it seems that the West Bengal Board of Secondary Education issued a notification on June 16, 1988 for changing the name of the School as per the decision of the Executive Committee held on 21st April, 1988.

4. The petitioners have claimed in this writ application that the Board as well as the Managing Committee have no power to take such decision which would be detrimental against the interest of the School, for changing the original name. Therefore, the petitioners had made several representations in writing before the Director of School of Education, District Inspector of Schools, District Midnapore and other authorities but since such representation did not evoke any favourable response, the petitioners, therefore, have to finally knock the doors of the Court for quashing the above notification.

5. The Headmaster and the Secretary of the said School had filed an affidavit-in-opposition and challenged the averment of the petitioners by stating that the Executive Committee is empowered to make bye-laws which should be consistent with the Act, Rules or Regulations made thereunder for discharging its functions under this Act. It has been further stressed that under Clause 5 of Section 19(A) of the Board of Secondary Education Act, it has provided plenary power to the Executive Committee to do all the acts and those shall not be invalid only on the ground that no specific power of appeal is made in the Act against such Administrative Act. It has been further claimed that the Apex Court has laid down the law that all incidental powers which are available to a statutory body could be exercised in case of exigency. Since the State Government would not be in a position to shoulder all the financial responsibility, that is required for the spread of Secondary Education in West Bengal, the receipt of donation or gift cannot be said to be illegal. Dr. Sachindra Nath Pradhan is still an Indian national who is a resident of village Kudamburi. He has his landed properties, residential bastu and other movable and immovable assets in the village. Dr. Pradhan is a distinguished Professor of Harvard University in the United States of America. In past, he liberally offered donation to a tune of Rs. one lakh to Repara Primary Health Centre to upgrade it to rural health centre. Similarly, he has made several other donations to different institutions. He made an offer for donating two lakh rupees for the development of the School in question on conditions that his father's name "Bhuth Nath Pradhan" be appended to the name of the School.

Accordingly, there was a public meeting and it was unanimously resolved for changing the name of the School in the public meeting. It was, accordingly, advertised in Amrita Bazar Patrika that since Bhuth Nath Pradhan a renowned person of the locality, Primary Teacher and for some time also a member of the Managing Committee of the School who made valuable contribution for the development of the said School, to commemorate the memory of such great personality, Dr. Pradhan being his son came forward to offer such liberal donation. In this background, the petitioners ought to have co operated with the School management for making substantial improvement in the field of education rather than filing a speculative writ petition for causing hindrance for advancement of such noble cause. :

6. Supplementary affidavit was also filed by the Headmaster of the School wherein it has been claimed that the Board of Secondary Education had, in the past, changed the names of many schools and in support of such contention, it filed the xerox copy of the notification.

7. Mr. Saradindu Samanta, the learned Advocate appearing for the petitioner, has strongly urged that the Board as well as, the Management had committed illegality in taking such decision and subsequently passing a Resolution for changing the name of the School. Improvement and development of the educational institution is primary duty of the State since it is a recognised institution. The financial burden has to be undertaken by the State. If any private individual is allowed to make liberal grants, it may breed to corruption, dishonesty and favouritism. The Executive Committee as well as the Board have no power to change the name of the institution. Therefore, in this background, the notification in Annexures "A" and "B" to the writ petition are liable to be quashed on the ground that" it violates Article 14 of the Constitution of India, and, therefore, ultra vires.

8. Mr. Bhuian, the learned Advocate appearing for the donor has refuted the submission of the petitioners. He has contended that since the Board as well as the Executive Committee having been empowered under the Act for laying down the scheme for development of the educational institutions, the receipt of donation by the educational institution cannot be characterised as unauthorised, illegal or violative of Article 14 of the Constitution. Even the State Government as well as the Central Government do receive grant for making substantial development in the field of education. Thus, there was no wrong to receive grant to perpetuate the memory of the father of Dr. Pradhan.

9. While examining the respective contention of the parties, it would be necessary to consider the scope and intendment of the Statute. It is axiomatic for the Court to uphold the decision taken either by the Board or by the Management, if such action was for the lawful purpose for spread of education. Mr. Samanta, the learned Advocate appearing for the petitioner has contended that all educational institutions are regarded as "citadel of learning" and in such background if donation, gift and presents if received, it may permeate

favouritism, nepotism and partiality and the serene and peaceful atmosphere will get polluted which may turnouts chaos, turmoil and indiscipline. Therefore, the care has to be taken to avoid such situation in such educational institutions.

10. It is true that educational institutions are the temple of learning's and every citizen of the country should contribute his best part to see such institutions are away from such unhealthy atmosphere. But, at the same time, all must make concerted effort for overall improvement and development of those institutions. The State with its diverse expenses may not always be able to spend the required amount for the upliftment and progress of the educational institutions. Therefore, the Board, educational institutions and sometimes, the Government approved statutory body to receive voluntary donation for upliftment of such institutions.

11. While examining the validity of the contention raised by Mr. Samanta, I hereby quote some of the provisions of the Act. Section 19(3) of the West Bengal Board of Secondary Education, 1963 is extracted here below :--

"(1) (Subject to any general or special orders of the State Government the provisions of this Act and any rules or regulations made thereunder, the Executive Committee shall have the power) to

(a) advise the Board on all matters relating to development of Secondary Education;

(b) take such steps as may be necessary to carry out, as directed by the Board, the policy in accordance with the provisions of this Act;

(c) (Subject to any directions) of the State Govt. in regard to the number, location and manner of selection-

(i) grant or refuse recognition to Institutions, and

(ii) withdraw recognitions granted to Institutions, after considering the recommendation of the Recognition Committee;

(d) (i) amalgamate two or more Institutions into one Institution,

(ii) split one Institution into two or more Institutions, and

(iii) shift an Institution from one site to another;

(e) (i) supervise the functions of the Managing Committees,

(ii) approve or withhold approval of the constitution of the Managing Committees,

(iii) approve special constitution of the Managing Committees,

(iv) supersede a Managing Committee and appoint Administrator or Ad-hoc Committee to manage the affairs of an Institution;

(f) maintain a register of recognised Institutions;

(g) provide, after considering the recommendations, if any, of the Syllabus Committee, the Syllabus, the courses or studies to be followed and the books to be studied in recognised Institutions and for examinations instituted by the Board;

(h) undertake, if necessary, with the approval of the State Government, the preparation, publication or sale of text books and other books for use in recognised Institutions;

(i) (a) maintain and publish lists of books approved for use in recognised Institutions and for examinations instituted by the Board, and

(b) revise such lists from time to time;

(j) (set down) the conditions to be fulfilled by candidates presenting themselves for examinations instituted by the Board;

(k) provide, after considering the recommendation, if any, of the Examinations Committee and the Regional Councils and with the approval of the State Government, the rates of the remuneration to be paid to paper-setters, moderators, tabulators, examiners, invigilators, supervisors and other persons employed in connection with the examinations instituted by the Board and the rates of fees to be paid by candidates for such examinations;

(1) (i) grant permission to candidates to appear at the examinations instituted by the Board, and

(ii) refuse or withdraw such permission, if it thinks fit, (stating the reasons of such refusal or withdrawal)."

Section 18 is stated as follows :--

"(A) Where the name of a recognised Secondary School is proposed to be changed by the School Authorities in consideration of the contribution in cash or kind made by a person or persons of the locality, or in recognition of the services rendered by a person or persons, either to perpetuate his/her/their own memory or the memory of any of his/her/their relation(s), such proposal may also be accepted by the Board provided the value of the donation received for the purpose is not less than Rs. 50,000/- (Fifty thousand) in case of a Junior High School, and not less than Rs. 1,00,000/- (One lakh) in case of a High School including Higher Secondary School, but excluding independent XII Class Schools. In case of contribution in kind, the School Authority shall obtain a certificate from a Govt. Value of property (sic) showing the value of the property gifted to the School in connection with the proposed change of name.

(B) The Board shall ordinarily not entertain any proposal for the change of name of a recognised Secondary School which has been earlier changed in the line noted above and that there shall be no change in the name of a School if it is already recognised by the Board after the name of a person.

(C) Procedure :

In submitting a proposal for change of name of a recognised Secondary School the following procedure will have to be observed by the School Authorities :

(1) The School Authority shall adopt a resolution stating fully the reasons for the proposed change in the name of the School.

(2) Thereafter the School Authority shall convene a public meeting of the local people with the due notice in at least two leading newspapers and also in the offices of Gram Panchayat, Panchayat Samity and local Educational Authority for acceptance of the Resolution of the School Authority by adopting a resolution in support of the proposed change of name of the School. Simultaneously, objections, if any, to the proposed change of name, to be filed within one month from the date of publication of the advertisement, be invited by the School by the School Authority by publishing the proposed change of name of the School in a prominent daily.

(3) The School Authority shall then consider objections, if any, raised in the public meeting or received in response to the newspaper publication and take a final decision.

(4) The concrete proposal for change in the name of the School as finally adopted along with documentary evidence of contribution, copies of the resolutions of the School Authority and of the public meeting and copies of newspaper insertion along with public objection, if any, School Authority's observations thereon shall be submitted to the Board through the District Inspector of Schools (S.E.) concerned.

(5) The District Inspector concerned will send the application for change of name of the School along with the relevant documents with his observations thereon to the Board.

The decision of the competent authorities of the Board in the matter of acceptance or rejection of the application for change of name of the School shall be final.

This notification is issued in supersession of all previous orders, circulars and notifications of the Board in this respect."

Powers and duties of the Board, have also been defined u/s 27 of the Act which reads as follows :--

"(a) to lay down the general policy for development of Secondary Education in West Bengal;

(b) to conduct periodical survey to assess the educational needs of West Bengal with particular reference to such needs of the Scheduled Castes, the Scheduled Tribes and other Backward Communities and of the hill areas in West Bengal;

(c) omitted;

(d) to institute Secondary Examinations and such other examinations as it may think fit and to make regulations in this behalf;

(e) to administer the West Bengal Board of Secondary Education Fund;

(f) to institute and administer such Provident Funds as may be prescribed;

(g) to make regulations relating to the conduct, discipline and appeal in respect of the members of its staff;

(h) to decide any appeal preferred against any decision of the Executive Committee or, subject to the provisions of this Act, any other Committee constituted under this Act;

(i) to award diplomas, certificates, prizes and scholarships in respect of any examinations instituted by the Board.

(3) Subject to the provisions of Sub-section (2), the Board shall have the power to make regulations in respect of any matter for the proper exercise of its powers under this Act.

(4) No regulation shall be valid unless it is approved by the State Government and the State Government may, in according such approval, make such additions, alterations, and modifications therein as it thinks fit (and also specify the date or dates from which the regulations shall come into force or shall be deemed to have come into force) :

Provided that before making any such addition, alteration or modification the State Government shall give the Board an opportunity to express its views thereon within such period not exceeding one month as may be specified by the State Government.

(5) All regulations approved by the State Government, shall be published in the Official Gazette.

(6) Subject to the provisions of Sub-sections (2) and (3) the Board shall have the power to require the Executive Committee, from time to time, to submit reports, returns, statements and other information on any matter relating to the duties of the Executive Committee referred to in Sub-sections (3) and (4) of Section 19A."

12. It has been contended by Mr. Bhuian that the Resolution was passed long time ago and a copy of the Resolution of the Executive Committee was sent to the State Government. If there be any objection by the State Government, it could annul the said Resolution by invoking its power u/s 39 of the Act. Since no action has been taken by the State Government, it could well be presumed that the State Govt. has no objection to the said Resolution. Mr. Basu, the learned Advocate appearing for the State has submitted that since the petitioner had not challenged any action about the non communication of the copy by the Board to the Government, it would be futile now for them to contend that no such copy was communicated.

13. It is to be noted further that the State Government being the parties to the writ petition, it could as well raise objection, had the copy of the Resolution not been communicated to them. Therefore, there is no merit in the contention that no such copy was communicated to the State Government.

14. Mr. Bhuian, the learned Advocate appearing for the respondent No. 10, the donor that purposive interpretation should be made while considering relevant provisions of this Act. The Court should not adopt an inflexible or rigid stand to make the provisions of the Statute nugatory. By such Resolution, the petitioners are in no way affected. Therefore, this case, at their instance, has to be spurned. In support of his contention, he has relied upon a decision reported in *Sri Durga Gita Vidyalaya Association Vs. State of U.P. and Others*,

"The relief by way of writ is a proceeding of an exceptional type. The Court should not allow it to be utilised by a party for the purpose of obtaining its opinion on hypothetical and abstract questions, not directly arising in the case before it. nor for the purpose of seeking declarations. that are futile and irrelevant so far as the matter in issue is concerned. While exercising writ jurisdiction under Article 226, the High Courts in India do not act in an advisory capacity, and however fascinating might appear to be the form in which a party is able to present a legal question before the Court, the latter should resist the temptation of entering into this alluring region unless the legal question posed before it can be shown to be directly related to the specific right sought to be asserted or enforced in the writ petition itself. The primary purpose of Article 226 of the Constitution seems to be the enforcement of legal rights and obligations and not their declaration in vogue.

(c) Constitution of India, Article 226 -- Writ under, when can be issued -- There must be infringement of legal right -- Law cannot take note of mental injury -- Orders of recommendatory nature cannot constitute infringement of legal right.

Relief by way of writ is a discretionary one. Under the second part of Article 226, a writ usually issued only if the applicant has a legal right, and legal right is found by the Court to have been infringed. With certain exceptions, as in the case of Habeas Corpus, or Quo Warranto a Court exercising writ jurisdiction would be disinclined to grant relief unless the petitioner is able to make out that he is an aggrieved party i.e. his own rights are affected. This principle would be particularly applicable in a case, where the question of the validity of a piece of legislation is raised. Law cannot take note of the mental or even sentimental injury caused to any person for the purpose of granting relief under Article 226. The only injury that it can recognise is legal injury *The State of Orissa Vs. Madan Gopal Rungta*, and *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, , Rcl. on.

Where the authorities of the Education Department wrote to the manager of an educational institution that the dismissal by the institution of its Principal without prior approval of the authorities under the intermediate Education Act (2 of

1921) was ultra vires and that if the institution did not cancel the order of dismissal the grant-in-aid given to the institution might be suspended :

Held that the orders in question were merely of a recommendatory nature and had obviously no binding effect on the institution. The latter was at present liberty to ignore or disregard them. The orders did not affect the legal right of the institution to dismiss the principal. The orders did not also constitute any threat to the legal right of the institution. Merely, because the orders were hurtful to the feelings of the institution no relief could be granted under Article 226."

15. In the matter of construction of statute, the cardinal principle applicable has to be borne in mind that if the legislature has provided some powers to a statutory body or to the management, by necessary implication it has to be presumed that anything which is necessary for the purpose of carrying out the purpose of the Act has to be done. The power to make a law with regard to any subject carries with (it) all ancillary and incidental powers to make the law effective and workable and to prevent evasion. The stand taken by the petitioner that the alleged acts by the Boards as well as by the Managing Committee are discriminatory and violative to Article 14 of the Constitution of India appears to be without substance. The statute has empowered to take such steps what all are necessary for the development of the secondary educational institutions. Therefore, the receipt of donation or gift from the donors amounts to overall development of the Secondary Schools and it cannot be characterised to be arbitrary, whimsical and fanciful which in no case can bring corruption, nepotism and favoritism.

16. The Rules which is legislative in character must mean to interpret as a connected law giving life-force to each word, phrase and it should not be interpreted to render as surplusage. The desired results cannot be had only when the construction of the relevant rules, phrase and sets would lead to a disastrous or deleterious effect. Mr. Samanta has failed to bring out any such far reaching consequence which would emerge from the Resolution passed by the Executive Committee. Mr. Bhuian has relied upon a decision reported in Arun Chandra Ghose Vs. Union of India, and contended that since no right has accrued to the petitioners for challenging the action of the Board, the present writ petition at their instance, therefore, shall not be maintainable. If the petitioners could make out a case that their right which entitles them to move the Court under Article 226 of the Constitution of India has been invaded, then they could maintain the writ. Otherwise, the writ petition shall have to be thrown out.

"The reason for my referring to the averments in the petition is to show that the petitioner's case as made out in the petition is that the political party known as Lok Sevak Sangha of Purulia has been aggrieved by the impugned Notification and that its misfortune in the elections has been due to the allotment of free symbols to this party, as such allotment created confusion between candidates of this party and independent candidates. That being the position, it was for the

said political party to seek relief in the writ jurisdiction of this Court, assuming it is entitled to such relief. But the said political party is not the petitioner in this case, nor has this application been made by the petitioner on behalf of the political party. According to the petitioner allotment of free symbols to the said political party has caused the set-back in the fortunes of the party at the General Elections. According to the petitioner again allotment of "Reserved Symbols" to the recognised political parties has given such recognised political parties an advantage over unrecognised political parties like the Lok Sevak Sangha. This is the basis of the petitioner's grievance in this application. But strangely enough, the party who, according to the petitioner has been aggrieved and injured by the allotment of election symbols, has not come forward to move this application. There is no explanation in the petition as to why the said political party has not chosen to move this application. That being the position, is the petitioner entitled to a rule nisi on the ground that he is a member of a political party which has been injured and aggrieved by the issue of certain notifications by the Election Commission, although the said political party has chosen to remain (in) the background instead of coming forward to move this application for agitating its grievances? I think not. As I have noticed earlier, this is not an application made in representative capacity. There is not even an averment that the petitioner has been authorised to move this application on behalf of the said political party. The question, therefore, is, has the petitioner a right in law for the enforcement of which he can invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution? It is now well-settled that the existence of a right is the foundation of the exercise of jurisdiction of this Court under Article 226 of the Constitution, (1) *The State of Orissa Vs. Madan Gopal Rungta*, . It is also well-settled that the right to be enforced under Article 32 of the Constitution must be the right of the petitioner himself who complains of infractions of such right and approaches the Court for relief, (2) *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, In (3) *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, the Supreme Court held that the right that could be enforced under Article 226 of the Constitution also should ordinarily be the personal or individual right of the petitioner himself though in the case of the writs like habeas corpus or quo warranto this Rule might have to be relaxed or modified."

It has been further stressed that the receipt of donation could further the progress of education, the petitioners' narrow approach about such receipt cannot be countenanced. They relied upon a decision reported in *U.P. Kattha Factories Association Vs. State of U.P. and others*, :--

"It was next argued that there was a downward trend for the success or return of candidates from the said political party in the elections to Parliament and State Legislative Assembly because of the allotment of "free symbols" to the candidates of the said political party in the last three General Elections."

The Board has also, in the past, changed the name of the School by their

Notification No. 2142/G/ G0575-25105 "Janai Devi Goenka High School -to-Salkia Mrigendra Dutta Smriti alika Vidyapith (High)".

17. Therefore, in view of such previous action of the Board, which still holds good, the petitioner cannot now challenge the act of the Board as violative of Article 14 of the Constitution of India. Thus, it can be said in no uncertain terms that the Board is empowered to change the name of the particular Secondary School and thereby it cannot be said to have acted whimsically, arbitrarily and illegally so as to warrant interference by this Court by invoking its power under Article 226 of the Constitution of India.

18. In the result, the writ petition is devoid of merit and the same is dismissed but in the circumstances without costs.