
(2001) 07 CAL CK 0020
In the Calcutta High Court
Case No : Writ Petition No. 8540 (W)

Mridul Ghosh

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

West Bengal Board Of Secondary Education Act, 1963 — Section 45(1)

Citation : 106 CWN 250

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Chitta Ranjan Chakraborty, for the Appellant; A.P. Lahiri, Swapan Banerjee and Monisha Mukherjee, for the Respondent

Judgement

Amitava Lala, J.—In this writ petition, an interesting point has cropped up. Two names were forwarded to the concerned School as Panchayat nominees of the local Panchayat. The first name was forwarded by the President of the Panchayat Samity alone and the second name was forwarded by the President on the basis of the recommendation of the Sthayee Samity. Since the election was, held, an office bearer election was completed taking the name of the first referred candidate. I.e. Sri Shyam Sundar Chakraborty as Panchayat nominee of the Managing Committee of the Institution, the second candidate, i.e., Sri Mridul Ghosh, the petitioner herein challenged such earlier nomination. As a result whereof, a dispute arose before this court in respect of forwarding or nominating the name of the Panchayat nominee by the President of the local Panchayat alone. A vernacular written memorandum being 871/PN(o)/1P-20/95 dated 14.3.97 has been shown to this court for the purpose of getting appropriate clarification by both the parties. Such vernacular written memorandum is annexed being P-1 of the writ petition. It appears from there that the Deputy Secretary of Panchayat, Government of West Bengal has given a clarification in respect of giving nomination under the Recruitment Rules made for recruitment of teaching and non-teaching staff of Secondary Schools including Madrasah issued by the Director of School Education West Bengal vide Memo No. 2066-

G.A. dated 27.10.95 effective from 1.12.95. In mode of selection of selection committee under Rule 5 Sub rule IV therein I find one nominee of the Panchayat Samity for School situated in rural area is to be nominated by the Sabhapati, Panchayat Samity. This is the crux of the case, other part of the sub-rule is irrelevant for the purpose. I have a great doubt in holding that the Recruitment Rules is the appropriate rule for the purpose of management of the non-governmental institutions. Hence I have called upon the parties to make their respective submissions in respect of the Management Rules. It has been brought to the notice of the court that Rule 6 of the Rules of Management of Recognised non-Government Institutions (Aided and Unaided) 1969 with upto date amendments says how this composition of the Committee of an Institution other than that sponsored by the State Government will be governed. It appears that the Committee will be formulated by various categories of members, i.e., one founder, one Life-Member, four guardians in respect of the School having Class XI and XII and/or Class X High Schools and two guardians in the case of Junior High Schools, one person interested in education (to be co-opted) with a proviso that in case of an Institution located within the jurisdiction of a Panchayat, one person interested in education shall be the nominee of the local Panchayat Samity. The person so nominated shall be a resident of the locality within the jurisdiction of the said Panchayat Samity.

2. According to me, since the dispute is in relation to formation of the Managing Committee, Managing Rules will govern the field and prevail over the Recruitment Rules.

3. This Rule has been framed under the West Bengal Board of Secondary Education Act. 1963 as amended upto date. Section 45(1) of the Act provides that State Government is empowered to make Rules for the compensation, powers and functions of Managing Committees of institutions. Therefore, one has to proceed with the legislative intention which predominates the state of affairs. Policy and object of the Rule is well founded. On the other hand. Recruitment Rules is made for recruitment process only. In any event provision as made therein is for making nominee of Selection Committee. If today the court allows filling up the vacancy of the Panchayat nominee in the Management Committee following the Recruitment Rules then the same will be hit by principle of Ejusdem Generis.

4. However, there is one uniformity in both the Rules. Filling up the post of Panchayat nominee will be made by the Panchayat Samity not by the President/ Sabhapati alone. Recruitment Rules, which has been dealt with by the office order being P-1 of the petition says that nominee of the Panchayat Samity will be made by the Sabhapati/President of Panchayat alone as an attentive mode of Panchayat Samity which is absolutely wrong. At best, he may be the communicator of the decision of the Panchayat Samity, which is the true import even in the Recruitment Rules under Rule 5(a)(IV) of the same. A principle should have to be adopted either in the case of Managing Committee or in the

case of Selection Committee to make the movement of the State or State machinery at par and transparent. In the office order in P-1, the Deputy Secretary of the Panchayat Samity, Government of West Bengal wanted to override or supersede the Rules framed or prescribed for the purpose of its applicability which he cannot. It is to be remembered that an administrative order cannot override the law nor can amend the law in an indirect manner without valid sanction. As per the office order not only Panchayat Samity or the President both are appropriate persons for the purpose of nomination of the Panchayat nominee and if without the decision of the Panchayat Samity, the President does so the same will be subsequently ratified by the Panchayat Samity. This is a dangerous step to give impetus to autocracy. My reading is that such administrative order of such Deputy Secretary proceeds de hors the law. There is no law which gives power to the President of the Panchayat Samity to nominate anybody of his choice alone to an institution. Therefore, there is hardly anything to be ratified. It is a question of joint decision by a democratic set up but not an autocratic action which will be ratified subsequently.

5. Hence, the only course should have been left open for the purpose i.e. referring the matter to the Board of Secondary Education for taking decision. But as I find that there is practical difficulty in view of the communication so made by the Deputy Secretary of Panchayat, State of West Bengal, it is appropriate that both the Secretaries of the Panchayat and the Education, State of West Bengal sit together and take a joint decision in this respect and communicate the same to all concerned in the light of the judgment and order of this court so that no anomalous situation takes place in nominating a Panchayat nominee in future. This is far more necessary when neither of the Management Rules nor the Recruitment Rules prescribed for the same either expressly or impliedly. Such decision will not be taken by any Deputy/Joint or under Secretary or delegates other than the Secretaries and within a period of three months from the date of communication of this order and issue a fresh notification clarifying the position thereof within two weeks thereafter.

6. However, functioning of the present Managing Committee formed by way of the election should not be disturbed in any manner whatsoever but neither of the nominees of the Panchayat will be allowed to participate in such Managing Committee till the decision is taken by the authorities and communicated to all concerned on the basis of such decision.

7. Thus, the writ petition stands disposed of. There will be no order as to costs. Let urgent Xerox certified copy of this order, if applied for, be given to the learned Advocates for the parties within seven days from the date of putting requisites failing which the concerned Registrar is directed to take immediate steps to that effect.