

(2001) 07 CAL CK 0044
In the Calcutta High Court
Case No : Writ Petition No. 1009 of 2001

M/s Esha Bhowmick and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 09-07-2001

Acts Referred:

Citation : 107 CWN 229

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Judgement

Amitava Lala, J.—The writ petition was made for the purpose of appointment of a Drawing and Disbursement Officer of the concerned school and to ensure that the teaching and non-teaching staff of the school can receive arrear salaries for the months of March and April 2001 as well as current salary for the month of May 2001 and go on disbursing salaries month by month. The other prayers are in effect incidental and interlocutory in nature. Initially upon hearing the petitioners as well as the school authority I had confusion in my mind in respect of determination of this court, whether this is a dispute in respect of the affairs of the Managing Committee with an ultimate effect of appointment of any person for the purpose of drawing and disbursing salaries of the teaching and non-teaching staff or it is a case of disbursement of salary simplicitor. If it is a disbursement of salary simplicitor there is a confusion whether the court can take up the matter. But if it is a part of appointment of a Drawing and Disbursing Officer in respect of the Managing Committee or Governing Body then the Court has jurisdiction and I find from the merit of the case that this is really a perpetual dispute due to administration of the Managing Committee and the Governing Body. Therefore there cannot be embargo in taking up the matter in respect of the determination of this court. On top of it, if the court finds that release of the salary which will be made by the School not in their hands but in the hands of the District Inspector of Schools for its approval, that too is also a part of the determination of the court. Therefore there cannot be technical difficulties in taking up the writ petition which has been clarified by the court to

the learned Counsels appearing for the parties at the threshold. Learned Counsel appearing for the petitioners and Learned Counsel on behalf of the Managing Committee of the school were heard at length. However, nobody was present on behalf of the District Inspector of Schools. Subsequently learned Counsel appearing for the District Inspector of Schools contended before this court that they were confused about the service of notice. However, from the record it appears that on three days i.e. 22nd May 2001, 23rd May, 2001 and 24th May, 2001 the matters were heard by this Court. Ultimately on 24th May 2001, upon being satisfied, this court was pleased to direct the District Inspector of Schools to appoint a Drawing and Disbursement Officer for a limited period to disburse salaries to the teaching and non-teaching staff to test the bonafide. That part is available in the order of the Court dated 24th May, 2001. It appears that on the day when the matter was going to be moved, learned Counsel appearing for the school has come with the case that they have already released the salary within that day or one day before. However, the court was not very much pleased with the situation and categorically observed that in such stalemate situation in a school the real sufferers are the students, teaching and non-teaching staff. Therefore the court has taken its own decision in passing an interim order and in compliance with such order, the concerned District Inspector of Schools was pleased to appoint a Drawing and Disbursing Officer of his choice. He was appointed and took charge when disbursement was started. A subsequent interlocutory application was made by the writ petitioner to extend the scope of the writ petition upon making an allegation that the Drawing and Disbursement officer was not appointed in terms of the order of this court. The court was pleased to direct that the concerned District Inspector of Schools will appoint a Drawing and Disbursement Officer within a period of 24 hour from the communication of this order. Now from the order it appears that communication of the order was made on 30th May 2001 and appointment of Drawing and Disbursement Officer was made on 31st May, 2001. But it appears that communication was made under Memo No. 280/Law (6)/I dated 4th June, 2001. Naturally the Court was annoyed when it was explained before this court by the learned Counsel on his behalf that as because the second and the third days were holidays it was communicated only on 4th June, 2001. But I also find that there was a day before i.e. 1st June, 2001. Therefore this Court is only expressing the view that the concerned District Inspector of Schools henceforth should be more cautious. However, for the ends of justice, I have directed the District Inspector of Schools and the Director of School Education to be present with records. The reason for calling Director of School Education was not for any allegation but the court felt that he should be present as observer having control over all the District Inspector of Schools and take note of each and every fact so that he should be guided with better administration. The gentleman who was appointed as Drawing and Disbursing Officer was on the earlier occasion and today stated that all salaries were disbursed excepting for the month of June 2001 which will prepared as per the bill from 10th day of this month.

2. The parties have exchanged their Affidavits. The concerned District Inspector of Schools, instead of filing any Affidavit filed a report in this court as per earlier direction. I called upon learned Counsel appearing on behalf of the representative of the school. He has taken many technical points in respect of maintainability of the writ petition. Firstly he has taken note of the fact that the court cannot pass an order appointing a Drawing and Disbursing Officer. He has drawn my attention to Rule 27(3) of the Management Rules in respect of the Recognised Non-Government Institution (Aided and Un-aided) 1969 with upto date amendment. Rule 27(3) has been substituted by a Notification No. 717-SE(S) dated 27th September 1994 whereunder I find that if the District Inspector of Schools (Secondary Education) is satisfied that circumstances exist in which payment of grant-in-aid from the fund of the Institution is not possible the District Inspector of Schools (Secondary Education) may authorise an officer under him to draw and disburse the grant-in-aid in such manner as the District Inspector of Schools (Secondary Education) may think fit. By showing this provision he has drawn my attention to a Supreme Court judgment reported in U.P. State Road Transport Corporation and another Vs. Mohd. Ismail and others, In its Head Note "C" and paragraph 11, it is established that the court cannot take up the decision of the statutory authority that ought to be made in the exercise of discretion in a given case. The court cannot direct the statutory authority to exercise the discretion in a particular manner not expressly required by law.

3. The Court could only command the statutory authority by a writ of Mandamus to perform its duty by exercising the discretion according to law. Much emphasis was given in the above noted portion. Therefore, let me come back to the order first and the provision under Rule 27(3) of the Rules once again. In the Order dated 24th May, 2001 I find that the court was pleased to observe certain state of affairs and directed the District Inspector of Schools (SE) to appoint an Assistant Inspector of Schools of his confidence as Drawing and Disbursing Officer of the School within 24 hours after communication of the said order for a period of three months only or subject to the finality of the writ petition, whichever is earlier who will disburse the salary of teaching and non-teaching staff and furnish a report before this court through the District Inspector of Schools. Therefore, the first clarification is that the court has not passed an order appointing an Assistant Inspector of Schools but the court was pleased to command the situation by calling upon the District Inspector of Schools (SE) to appoint an Assistant Inspector of Schools which is within the four corners of the discretionary part of equitable justice available to a court of law having writ jurisdiction. Therefore, there is no conflict in between the order passed by this court with the above cited decision which is being sought to be reviewed herein. That apart, learned counsel's contention that excepting the Director of School Education nobody can appoint the Drawing and Disbursing Officer is absolutely incorrect in view of Rule 27(3) itself under which the power has been given to the District Inspector of Schools (S.E.) such District Inspector of Schools (S.E.) in

compliance of the Order of the Court has furnished a report before this court wherein it has been submitted that "it appears from the office records and from the correspondence by the School authority that the Managing Committee of the school was constituted in 1974 where Sri Upendranath Roy was placed as Departmental nominee from this end vide this office Memo No. 22/M dated 9.1.1974 vide notification No. 404-Edn(s) dt. 19.3.73. Reconstitution of the Managing Committee in normal course was disturbed badly due to repeated judgment orders of the Hon'ble High Court, Kolkata in various court cases on the matter. In the mean time (i.e. prior to 27.9.76) another Managing Committee was said to have been formed by Sitaram Arya as president of Arya Pratinidhi Sabha/ Arya Samaj, Kolkata on 11.9.97. But no record is found in this office from which it can be ascertained that the Managing Committee has been functioning in the school. It is relevant here to mention that no Departmental nominee could be placed from this end either to the present Managing Committee that is functioning or to the Managing Committee formed by Sri S. R. Arya which is being backed by Arya Pratinidhi Sabha but not functioning in the school, and this is as the case is subjudice. However, D.D.O. has been placed in compliance with the order of the Hon'ble. High Court. But, the school management is hampered very much in regard to the dispute between Arya Pratinidhi Sabha and Arya Samaj. This Report has been signed on 4th July, 2001.

4. I have called upon the Director of School Education to explain if this be the case then what should be the remedy available to the Institution and upon taking note of his submissions that in such a case the matter can be placed before the Board which will be assisted by the Director of School Education and upon going through Rule 8 of the said Management Rules. I have no hesitation to hold that an Executive Committee of the Board Can be constituted for the purpose of coming to the conclusion in respect of appointment of Administrator, etc. But I do not want to go that far at this stage by passing an order in connection thereto. I am sure that this being the position a Board will be formed which will come to a proper conclusion to overcome the stale situation of the Institution at an earliest, otherwise it will be fatal for the purpose of running the Institution. I am clarifying the position hereunder that the Board is free to draw any inference whatsoever without being influenced by the order of the court. In coming to the conclusion, the Board will definitely pass a reasoned order after giving fullest opportunities of hearing to all the parties appearing before this court including Director of School Education. This court is also of the view that the drawing and disbursing officer already appointed for disbursement of the salary should not continue for an indefinite period and for the same the Board is given only two months time from the date of communication of this order to come to a definite solution and the parties will act upon such solution. In the meantime, the drawing and disbursing officer so appointed by the District Inspector of Schools (SE), Calcutta will discharge his function as he was directed to continue. While passing this order. I am alive of the situation that there are other court cases pending between the parties and if there is an embargo in implementing any order of the Board, either

of the parties will be at liberty to mention before such court for the purpose of giving effect to this order.

5. During the course of hearing it is also pointed out before this court that one of the orders was obtained by consent of the parties by appointing Advocates of this court for the purpose of continuing as Government nominees. I cannot but refrain from making any comment in regard thereto since court always keeps faith upon the submissions made by the learned advocates from the Bar and acts accordingly in arriving at a conclusion and henceforth it should not be desirable that such type of submission will be made without the authority or proper explanation in connection therewith.

6. Learned counsel has also taken the point that this writ petition is limited to the extent of appointment of the drawing and disbursing officer but it cannot be extended for purpose of appointment of administrator. I am sorry to say that we are at cross purposes because of the reason that appointment of drawing and disbursing officer was made as an interim measure and that is continuing today even at the final stage of disposal of the writ petition but since it is an admitted position that Board is an authority to take cognizance of the matter and to come to a definite finding, after giving opportunities of hearing to all the parties. I do not think there is a clean bar in that extent. It may go either way and it will ensure ultimate benefit to the Institution. Thus, this court thinks fit that copies of the entire writ petition along with copies of the affidavits filed therein together with copies of all documents and annexures will be placed before the Board immediately upon communication of this Order by either of the parties so that the Board can come to a proper conclusion by passing a reasoned order upon giving opportunities of hearing to all the parties including the Director of School Education, District Inspector of Schools (S.E.) and Assistant Inspector of Schools.

7. It is pointed out by the learned counsel on behalf of the school that the subsequent connecting application was in the nature of contempt. Therefore no order can be passed other than issuing Rule of Contempt or for awarding punishment. But I can not agree with the learned counsel because of the reason that court can deal with the same even otherwise. In any event, this is not a contempt application but because of annoyance expressed by the Court which culminated in filing of an application of this nature, court is entitled to call upon any of the parties to be present before the court and explain the position at any stage of the proceeding whether it is in the interlocutory stage or final stage or at any stage of the proceedings or suit or connected application and/or in appeal or any connected application thereto. The position of law is well-settled. However, the court has taken a positive view while disposing of this matter. In any event, personal presence of the Director of School Education and District Inspector of Schools (SE) is not required and the same is dispensed with. However, the drawing and disbursing officer is directed to act as directed above.

8. Thus the writ petition is disposed of along with all connecting applications, if any, where no order need be passed.

9. Let xeroxed certified copy of this judgment will be supplied to the parties within seven days from the date of putting in requisition for drawing up and completion of the order as well as the certified copy thereof. All parties are to act on a signed copy minute of the operative part of this judgment on the usual undertaking and subject to satisfaction of the officer of the court in respect as above.