
(1991) 08 CAL CK 0016
In the Calcutta High Court
Case No : Matter No. 2173 of 1989

Nari Shikha Samity and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-08-1991

Acts Referred:

Citation : (1992) 1 CALLT 194

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Judgement

Susanta Chatterji, J.—The present writ petition has been filed by "Nari Siksha Samiti" a Society duly registered under the Societies Registration Act and running a School under the name and style of "Lady Abala Bose Balika Vidyalaya" and its Secretary Smt. Monica Mitra against the State of West Bengal, West Bengal Board of Secondary Education and their Principal Officers praying inter alia for a Writ of Mandamus to command the respondents to accord approval of the Special Constitution to the said Lady Abala Bose Balika Vidyalaya, being a department of Nari Siksha Samity by considering the application submitted as on 13th July, 1974 over which no action had allegedly been taken and to discontinue the appointment of the Drawing and Disbursing Officer for the purpose of effecting payment of salary to the staff of the said School and to restrain the respondent No. 8 since appointed as Drawing and Disbursing Officer from interfering in the matter of the said School as Administrator or otherwise and in the management and administration in any manner whatsoever. The teaching and non-teaching staff of the said School have, however, been added as proforma respondent Nos. 9 to 26. It is stated that the petitioner No. 1 Society has multifarious activities and one of its principal activities is to run a High School under the name and style of "Lady Abala Bose Vidyalaya". The said School is alleged to be managed, controlled and administered by the Managing Committee of the said School. The instant writ application is directed against the purported appointment of the Drawing and Disbursing Officer for the purpose of disbursing of the salary to the staff of the said School on the alleged ground of

administrative vacuum since no approval has been accorded to a Special Constitution as claimed for many years without assigning any reason. It is placed on record that Lady Abala Bose Balika Vidyalaya is an integral part and/or department and/or organ of Nari Siksha Samiti and there is no reason to deny the lawful demand of a Special Constitution. It is asserted that Nari Siksha Samiti is a Society within the meaning of the Companies Act, 1913 as also within the meaning of West Bengal Societies' Registration Act, 1961 and the said institution was founded by the widow of an eminent Scientist of India known as Sir Jagadish Chandra Bose. The said Samiti is allegedly carrying on the objects and activities in the field of social welfare including establishment and running of various teaching departments both at Calcutta and also at Jhargram. The Council of Nari Siksha Samiti is elected regularly and annually as per Rules 14, 21, and 22 of the Rules and the new Council has been formed as mentioned in the writ petition itself. There are Trustees to discharge their duties in accordance with law. It is also placed on record that in response to the Circular No. 1/74 dated 19th of April, 1974 issued by the respondent No. 2 the Secretary, West Bengal Board of Secondary Education, an application was filed on behalf of the petitioner Society for the approval of the Managing Committee of the said School as per the Rules and Regulations of the Samiti and there was a specific prayer for approval of the Special Constitution of the Society in terms of the Letter No. 1312-1315 dated 13th July, 1974. A copy of the said letter is Annexure "B" to the present writ petition. The respondent No. 6 the District Inspector of Schools (Secondary Education), Calcutta made enquiries time to time about the Managing Committee of the School in question and all information's were furnished accordingly. There is specific allegation of the petitioners that inspite of repeated applications being made the respondents have not taken specific steps to accord approval to the Special Constitution nor they have taken steps to provide adequate funds for necessary payment to the teaching and non-teaching staff. The petitioners were, however, surprised to find that the respondent No. 6 the District of Inspector of Schools, Calcutta by his Memo dated, 1-3.88 intimated although a grant amounting to Rs. 60,000/- had been released in favour of the said School of the Samiti the same could only be obtained by the Drawing and Disbursing Officer/Administrator/Ad hoc Committee as in the opinion of the respondent No. 6 there was a purported administrative vacuum. It is stated that in view of such pressure exerted by the respondent Nos. 2, 6 and 7 under duress and out of consideration of the several Government High Schools who are receiving salary under Salary Deficit Scheme of the Education Department of the Government of West Bengal, and to save those employees from facing undue financial hardship, the petitioner Samiti was compelled to accept the D.D.O. against its wish. The specific case of the petitioner is that there is no reason of withholding approval to the prayer of the Special Constitution and there is no reason of appointment any D.D.O. and/or Administrator to interfere with the administration and management of the High School by the Managing Committee of the petitioner No. 1 Samiti as per its Rules and in accordance with law. Elaborating all these points, the petitioners have come to this writ Court seeking reliefs as indicated above.

2. All the respondents are contesting writ petition. The State respondents have filed an affidavit sworn by the Assistant Inspector of Schools (Secondary Education), Calcutta. It is placed on record that Lady Abala Bose Balika Vidyalaya at No. 294/3, Upper Circular Road, Calcutta now known as Acharya Prafulla Chandra Roy Road had been recognised as Junior High School in the year 1968 with effect from 1.1.1967 with 4-classes (Class V-Class VIII) vide Memo No. 8971/G dated 20.6.68 of the West Bengal Board of Secondary Education. The recognition of the Junior High School had been extended upto 31.12.1970 by the Board's Memo dated 15.1.1979. The Organising Body of the said School did not apply for the Special Constitution for management of the School. The School has finally been recognised as a X-Class High School with effect from 1.1.1972 of Board's Memo No. 5537/4 dated 23.8.1972. The conditions attached to the recognition have got to be strictly complied with. In default, the Board reserves the power to cancel and/or withdraw the recognition. By letter dated 13.7.74 the Secretary of the Nari Siksha Samiti proposed to the Secretary of the West Bengal Board of Secondary Education for approval of a Special Constitution in accordance with the registered Rules and Regulations of the Samiti. The West Bengal Board of Secondary Education did not approve the Special Constitution probably on the grounds that the proposal was not made in accordance with the Rule 8(3) of the Management of recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 as amended from time to time. It is highlighted that in fact, in the instant case, no Special Constitution has been granted by the respondent Authority and therefore in practice Nari Siksha Samiti has been managing, controlling and administering the School without jurisdiction and legal authority. It has been found from the Audit Report that there is no fund/amount excepting salary deficit, Fund Account and almost entire money paid by the students of the School on different heads have been transferred to the Samiti Account illegally. All other allegations have been denied.

3. An affidavit has also been filed by the Law Officer of the West Bengal Board of Secondary Education on behalf of the respondent Nos. 2, 3 and 4. It is placed on record that Lady Abala Bose Balika Vidyalaya was first recognised a 4. Class Junior High School and thereafter Class-X School. The conditions to be fulfilled by Lady Abala Bose Balika Vidyalaya has not been reconstituted in accordance with the Rules and Non- Government Institutions (Aided and Unaided) Rules 1961. Smt. Monica Mitra, the petitioner No. 2 allegedly claiming to be Secretary wrote a letter to the President of the Board praying for approval of the Managing Committee as a Special Constitution. The Secretary of the Board, however, wrote a letter to the Headmistress of the said School as well as Secretary of Nari Siksha Samiti by letter No. 1731/G and 1732/G dated, 20th April, 1988 requesting them to appear before the President of the Board on 13th of May, 1988 with all records. Both the Secretary and the Headmistress appeared before the President and they informed that from the very beginning since the date of its recognition the Managing Committee was reconstituted according to the Constitution of Nari Siksha Samiti- The President informed them that unless the

Committee is approved by the Board whatever Committee is constituted has no legal identity. The Secretary of the petitioner Samiti and the Headmistress of the School however, informed that the present application for Special Constitution, has been filed on 19th May, 1988 with some documents and it was specifically stated that 3 (three) persons, to be nominated by the Nari Siksha Samiti in the Managing Committee of the said School. After examining the letter dated 19th May, 1988 and all the documents produced therein, it was found that no Deed was produced regarding ownership or building and land and the matter was placed before the Advisory Committee. It appeared further that Lady Abala Bose Balika Vidyalaya is managed by Sub-Committee constituted by Nari Siksha Samiti according to its Memorandum of Association. The School never applied for Special Constitution. It was decided to intimate the School Authority to submit the copy of the Deed after transferring land and building in the name of the School and thereafter the question of Special Constitution can only be considered. The said decision of the Advisory Committee was placed in the Meeting of the Executive Committee of the Board held on 19th December, 1988 and the Executive Committee approved the same. The Secretary of the West Bengal Board of Secondary Education informed the Headmistress of the School vide letter No. 3760/G dated 29th February, 1989 about the decision of the Board and requested to comply with the decision of the Board. The Headmistress, however, wrote a letter dated 1st of April, 1989 informing inter alia that Nari Siksha Samiti has its 5 (five) departments and one of the departments of the said Society is Lady Abala Bose Balika Vidyalaya. The District Inspector of Schools enquired about the validity of the said School-There is a chain of correspondences. Since, Special Constitution has not been approved by the Board and there is administrative vacuum and Drawing and Disbursing Officer has been appointed vide Memo No. 424/SC/G dated, 22nd March, 1988 and the respondent No. 8 has been functioning as D.D.O. since 5th April, 1988. The Headmistress has since submitted a prayer on 14th March, 1989 alongwith signature of staff of Lady Abala Bose Balika Vidyalaya for appointment of Administrator in place of Drawing and Disbursing Officer to solve administrative and academic problems. All other allegations of the writ petitioners have been controverted.

4. The added respondents have also filed an affidavit sworn by the Head" mistress Smt. Latika Dhar. Apart from the fact of recognition of the School from Junior 4-Class School to Class-X School, it is stated that the School came under the grant-in-aid Scheme and/or the salary deficit scheme of the Government with effect from 1st April, 1978 and as such monthly salaries are paid to the teaching and non-teaching staff of the School from the Government Fund. It is mentioned that the School is governed by the West Bengal Board of Secondary Education Act, 1963 as amended, and the Rules for Management of recognised Non-Government Institution (Aided and Unaided) Rules, 1969 as amended. The said Act 1963 and the Rules 1969 provide that there shall be a Managing Committee in each Institution for running its administration. Rule 6A of the said Rules

provide for amending and formation of a Committee. The authorities concerned have prescribed under notification a procedure for holding election of members for the purpose of constituting or reconstituting of the Managing Committee of Non-Government Institution in reference to Rule 9 read with Rule 6A of the said Rule 1969 as amended. According to the added parties, there is absolute administrative vacuum and the interest of the teaching staff and non-teaching staff and students at large is seriously prejudiced and the claim for Special Constitution by the writ petitioner is misconceived. An Administrator is required to be appointed unless there is proper election in accordance with law to constitute a Managing Committee. All other allegations of the writ petitioners have been controverted.

5. Upon perusal of the materials on record and having heard the learned Lawyers of the respective parties, this Court finds that a short point has arisen in the instant case as to whether the petitioners are entitled to have a Special Constitution for the purpose of management and administering Lady Abala Bose Balika Vidyalaya as Department of Nari Siksha Samiti under its Rules, or not. The State respondents and/or the added parties being teaching staff and non-teaching staff have no part to play in granting approval to the prayer for Special Constitution. It is true that the added parties may place on record their views if the West Bengal Board of Secondary Education being the appropriate Authority to consider granting approval of the Special Constitution as sought by the petitioners Society regard being had to the fact of protection of the interest of the teaching staff and non-teaching staff in accordance with law. The views and/or objections of the State respondents are also required to be considered in the manner as provided in law. The attention of the Court has been drawn that the application for grant of Special Constitution has not been considered by the Board in accordance with law by giving proper opportunities of hearing and the conditions of transferring the Deeds in favour of the School as disclosed in the affidavit filed by the Board is unwarranted and uncalled for. The references have been made to the case reported in 1979 (2) CLJ 445 (Paikpara Manindra Memorial High School v. State of W. B. and Ors.) as to the relevance of Rule 8 and Rule 31 and the effect on denial of an opportunity of hearing. The attention of the Court has also been drawn to the case reported in 1976(2) CLJ 289 (Sochi Nath Ghosh and Ors. v. West Bengal Board of Secondary Education and Ors.) and 1979(2) CHN 341 (Ashim Kumar Bhattacharya and Ors. v. Administrator, West Bengal Board of Secondary Education and Ors.). The ratio of the said decisions is that in the context of the present case, there should be consideration of prayer for grant of Special Constitution in accordance with law and there should be a speaking and reasoned order after giving an opportunity of personal hearing and by complying with the principles of natural justice.

6. Admittedly, Lady Abala Bose Balika Vidyalaya is a Department and/ or Unit of Nari Siksha Samiti a registered Society. The Society has its own Rules under the Rules of the Society, a School has been founded. The question of transferring the land and building by the Samiti in favour of the School being one of its

Department does not arise. If the School has been founded under the Rules of the Samiti, the Samiti has every right to ask a Special Constitution. The prayer for Special Constitution has got to be considered by the Board in accordance with law. It is a statutory function of the Board to discharge its lawful duties. Such a duty has got to be discharged strictly according to law by complying with the principles of natural justice. This Court does not find that the prayer for grant of the Special Constitution has been considered by the Board in the proper perspective by giving all opportunities of hearing and by passing a speaking and reasoned order which has duly been communicated as required under law. The added parties being the teaching and non-teaching staff may be permitted to raise their objections, if any, and/or to place their views to protect their interest at the time of consideration of the grant of Special Constitution. The demand of the teaching and non-teaching staff for appointment of an Administrator is not appreciated by this Court at this point. The fund for the salaries of the teaching staff and/or non-teaching staff is released by the Government and there is a Drawing and Disbursing Officer to effect payment of salaries. There is no question of prejudice towards the interest of the teaching staff and non-teaching as to the disbursement of their salaries. The Drawing and Disbursing Officer has nothing to do with regard to the internal management and administration of the School and the added parties cannot confuse the issues by asking for appointment of an Administrator. The real problem is as to whether there will be approval to the Special Constitution or otherwise, there should be a proper reconstitution of the Managing Committee by holding election in accordance with law.

7. Considering all these questions in depth, this Court is of the view that the petitioner No. 1 Samiti should make a formal application for grant of Special Constitution in continuity of the previous application as already made and referred in the writ petition within a period of 4 (four) weeks from date. The Board will consider the said application along with all previous applications afresh within a period of six weeks from the date of filing the application as per leave of this Court as indicated above by giving an opportunity of personal hearing to the petitioners Samiti, the added respondents and the State Respondents. The Board will pass a speaking and reasoned order and the same will be communicated to the parties concerned. If the Board holds that there is no necessity of granting Special Constitution as required under law, there should be an appointment of an Administrator for the limited purpose to hold the election in the manner as provided under the Rules in the absence of a Special Constitution to reconstitute the Managing Committee of the School and to permit the newly Managing Committee to function the management and administration of the School in question. With these observations, the writ petition is disposed of. All other interim orders excepting the continuation of the function of the D.D.O. are vacated. No order as to costs.