

(2006) 01 CAL CK 0042
In the Calcutta High Court
Case No : W. P. No. 6056 (W) of 2005

Nemai Das and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-01-2006

Acts Referred:

Citation : 110 CWN 558

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Subir Sanyal, Kamal Mishra and Goutam Dey, for the Appellant; Milan Chandra Bhattacharya and T.K. Jana, for the Respondent

Judgement

Arun Kumar Mitra, J.—Seven writ petitioners moved the instant writ petition with the following prayers:

- a) A writ in the nature of Mandamus commanding the respondents, their agents and servants to forbear from giving effect or further effect to the impugned election held on 27-02-2005 under guardians category in the Sadhi Rajendra Narayan High School (H. S.) and from placing any departmental nominee and from interfering with the functioning of the present Managing Committee of the said school
- b) A writ in the nature of mandamus commanding the respondents, their agents and servants to cancel the election held on 27-02-2005 under guardians" category in the Sadhi Rajendra Narayan High School (H.S.).
- c) A writ in the nature of Certiorari directing the respondents their agents and servants to produce all records and proceedings, so that conscionable justice may be administered by quashing the impugned election dated 27-02-2005 and by granting the other reliefs as prayed for hereinabove :

FACTS IN BRIEF

The writ petition concerns the election of the Managing Committee of Sadhi

Rajendra Narayan High School (H.S.) (hereinafter termed as said School).

2. According to the petitioners, for the Constitution of the Managing Committee of the said School, steps were taken. Voter's list was published on 22-01-2005: Date for filing of objection was fixed as 29-01-2005. Final Voters' list was published on 09-02-2005, 16-02-2005 was due fixed for submission of nomination papers, 18-02-2005 was the date of verification of nomination papers, 19-02-2005 was the date of withdrawal of the nomination papers and election of the Guardians' category was scheduled to be held on 27-02-2005,

3. According to the petitioners; from the very inception, irregularities crept up in the process towards re-constitution inasmuch as resolution was adopted to appoint Presiding Officer and Returning Officer to conduct the Guardians' category election (hereinafter termed as said election)

4. It is the allegation of the petitioners that in the rules regarding holding election for re-constitution of a Managing Committee of a School, there is no provision for appointment of Presiding Officer or Returning Officer.

5. It is further alleged by the petitioners that the resolution was not signed by the Secretary of the Managing Committee. A copy of the election programme has been annexed to the writ petition as Annexure P-1.

6. According to the petitioner, Provisional Voters' list was published on 22-01-2005. It was found that numerous defects crept in and so many names have been excluded from the Voters list. The petitioners cited an example of Sri Bibhutipada Maity, who is a guardian but his name didn't appear in the Voters' list. He has been made respondent no. 7 in the writ petition.

7. It is further alleged that the name of Sri Maity was not in the Voters' list but he was requested to cast his vote.

8. The petitioners filed nomination papers in terms of the election programme which was scrutinized and the petitioners were declared to be contesting candidates along with others. On the date of election, the petitioners were present at the venue at 9-00 A.M. The election was scheduled to be held from 9-00 A.M. to 12-00 P.M. When the ballot papers were opened by the Presiding Officer, it was revealed that the said ballot papers were totally defective and the printing impression in the same were erroneous inasmuch as there was no sufficient space to affix the emblem of election and the election is held on the basis of the said ballot papers. Then, it can never be ascertained for whom the votes have been cast.

9. The petitioners tendered their protest against such election on such defective ballot papers.

10. It is a further allegation of the petitioners that at about 10-00 A.M., one Sri Sadesh Ranjan Nayak, who is a member of Zilla Parishad of Purba Medinipur and a member of the CPI(M) party, came to the School premises and after getting

information about postponement of such election due to defective ballot papers, immediately took the Teacher-in-Charge on his motorbike and went for printing of fresh ballot papers. After about one and half hours the said Sri Nayak returned to the venue with newly printed ballot papers and forced the Presiding Officer to start polling at 11-3- A. M. By that time about 300 voters left the premises. The petitioners vehemently protested and lodged complaint before Ramnagar Police station. On the self-same date the petitioners lodged complaint before the Returning Officer.

11. According to the petitioners, election was conducted beyond the schedule hours illegally.

12. The petitioners alleged that clause 5(a) of the procedure for holding election was violated and the Provisional Voters" list was not approved.

13. According to the petitioners, clause 4 of the said procedure was also violated. The petitioners alleged that with so many irregularities the election has been conducted and attempt is being made to place the departmental nominee in such an election. In such circumstances the petitioners moved the instant writ petition with the above prayers.

Submissions

14. The learned counsel for the petitioners submits that the election held in such a fashion should be set aside in as much as there is no provision for engagement of Returning Officer and Presiding Officer in a School Managing Committee election. Provisional Voters" list was not approved by a valid resolution of the Managing Committee. Election was not held as per the schedule announced that is as per the election programme and as such so. many voters could not cast their vote.

15. The learned counsel for the petitioners further submits that in such an election held in such an illegal fashion cannot be termed to be valid election and as such no departmental nominee can be placed.

16. The learned counsel on behalf of the respondent no. 7 appeared and no affidavit-in-opposition was called for and/or filed by the respondent no. 7 or any other respondents.

17. The learned counsel for the respondent no. 7 Bibhuti Pada Maity also supported or championed the cause of the petitioners and the learned counsel for the respondent no. 7 claimed for fresh election.

Decision with Reasons

18. From the writ petition it doesn't appear as to when the tenure of the earlier Managing Committee expired or is due to expire; whether the election was conducted by a valid Managing Committee or not and/ or whether on such allegations the election can be termed as valid election or not

19. It appear from records that is from annexure P8 that a representation was made before the Additional District Inspector of Schools. Though West Bengal Board of Secondary Education and the Secretary of the Board were made parties, it doesn't appear that any copy of the writ petition was served on them or notice was served on them. It doesn't appear also that any representation was made before the West Bengal Board of Secondary Education, though the Board is the authority in this regard.

20., In my view, in such a case, Clause 34 of the Procedure for holding election is attracted which is quoted hereinbelow:

34. In case of any doubt or dispute in the matter of holding election at any stage, the matter shall be referred to the Board whose decision thereon shall be final.

21. In the above view of the matter, I, therefore, direct the Executive Committee of the Board to treat this writ petition as representation and to decide the election disputed in terms of Clause 34 of the procedure for holding election.

22. When deciding the dispute, the Executive Committee will give notice to the petitioners and also to the Secretary of the Managing Committee. If however, the life of the Managing Committee is still there, the Executive Committee of the Board will decide this election dispute within a period of three months from the date of communication of this order.

23. The registry or the department is directed to serve a copy of this order upon the Secretary, West Bengal Board of Secondary Education within a fortnight from date.

24. The learned advocate-on-record of the petitioners is also directed to communicate this order to the Secretary, West Bengal Board of Secondary Education along with a copy of the writ petition within a fortnight from date.

25. If the petitioners fail to communicate this order within the time specified hereinabove, the writ petition will be treated to be dismissed.

26. After the decision regarding the election dispute, the Secretary of the Board will communicate the said decision to the Teacher-in-Charge and/or Headmaster of the said School. In the meantime if the tenure of the earlier Managing Committee has expired, the District Inspector concerned is directed to appoint a Drawing and Disbursing Officer for disbursement of the salaries of the teaching and non-teaching staffs. In any event if the life of the earlier Managing Committee, which held the election, under whose banner the election has been held expired, the said Managing Committee will not be allowed to continue any further.

27. With the above directions the writ petition is disposed of.

28. There will be no order as to costs. Urgent Xerox certified copy, if applied for, be supplied to the parties upon usual undertaking.