
(1965) 09 CAL CK 0003
In the Calcutta High Court

Panchanan Jash and Others

APPELLANT

Vs

Board of Secondary Education, W.B. and Others

RESPONDENT

Date of Decision : 22-09-1965

Acts Referred:

Constitution of India, 1950 — Article 19(1)(f), 226, 31, 31(1), 31(2)
Societies Registration Act, 1860 — Section 5

Citation : 71 CWN 189

Hon'ble Judges : Bose, C.J;B.C. Mitra, J

Bench : Division Bench

Advocate : Nirmal Chandra Sen, Naresh Chandra Ganguly and Tarak Nath Banerjee, for the Appellant;S.K. Rai Choudhury, P.K. Banerjee, Arun Kuamr Deb and S.A.M. Habibulla, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—This writ petition is before us for disposal because of an order made by Mr. Banerjee, J. on July 15, 1965. The Administrator of the Board of Secondary Education, West Bengal, made an order superseding the managing committee and appointing an administrator for Bonpas Siksha Niketan, Burdwan, to take over charge of the school. The reasons for the appointment of the administrator of the school were : (1) Grave financial irregularity and (2) non-representative character of the managing committee of the school.

2. Sinha, J., held in (1) Makhanlal Chakravarty Vs. S.K. Chatterjee and Others, that the Executive Council of the Board of Secondary Education had the power either to appoint an Ad-hoc Committee or an administrator to take over the administration of a school. It was argued by the learned Advocate for the petitioners before Mr. Banerjee, J. that Section 36 of the West Bengal Secondary Education Act, 1950 (hereinafter referred to as the Act) only empowered the Board to supervise the administration of high schools through inspection and issue of directions. The Board of Secondary Education might, it was argued, delegate such a power to the Executive Council or the Administration of the

Board. Power was also provided by the Act to take disciplinary action against high schools or teachers or students of such schools. It was further submitted that the extent of the power might include affiliation and disaffiliation of a school, but did not include the right to expropriate school property in the garb of supersession of the Managing Committee. Having regard to these submissions by the learned Advocate for the petitioner, Banerjee, J. was of the opinion that he should not consider the matters sitting singly as he might have to dissent from the said judgment of Sinha, J., and therefore, under proviso (1) to Rule 1 of Chapter II of the Appellate Side Rules, read with Rule 30(12) of the Writ Rules, he referred this matter to my lord, the Chief Justice for appointment of a Division Bench for hearing this application. It is because of this order that this Bench has to deal with this application for appropriate writs or orders under Article 226 of the Constitution.

3. The Bonpash Siksha Niketan (hereinafter referred to as the school) is a high school in the district of Burdwan which was previously recognised by the University of Calcutta, and subsequently by the Board of Secondary education, West Bengal. The Board of Secondary Education, West Bengal (hereinafter referred to as the Board) was superseded and u/s 4(b) of the West Bengal Secondary Education (Temporary Provisions) Act, 1954, the powers, duties and functions, which under the West Bengal Secondary Education Act, 1950, or any rule, by-law or regulation thereunder might be exercised by the Board, the Executive Council or any Committee or the President, should so long as the order of supersession continued to be in force, be exercised and performed by an administrator to be appointed by the State Government. At the time when the petition was moved, the Board remained superseded and the Administrator represented the Board.

4. The said school was established in 1937 and continued as an unaided school till March 31, 1957. The managing committee of the school was constituted in June 1957, according to the directives of the Board. From April 1, 1957, the school became an aided school. The election of the managing committee was held according to the directives and circulars of the Board.

5. A letter dated December 28, 1961, was addressed by the Board to the Secretary of the school requesting the latter to show cause within ten days as to why the managing committee of the school should not be superseded and an administrator appointed in its place on the following grounds :

(i) The existing managing committee had remained unapproved owing to the irregularities in the administration of the school.

(ii) The said committee had become non-representative in character, and there were only six members on the committee out of twelve.

(iii) Many important documents including audit reports up to 1960 were missing from the school file.

(iv) The cash book revealed that it was maintained most perfunctorily.

(v) The report of the Enquiry Officer revealed that the Secretary formed a conspiracy with the Head Master to frustrate the enquiry and himself remained absent and asked the Head Master to misbehave.

6. By a letter dated January 8, 1962, the charges made against the managing committee were answered. On February 3, 1962, the Secretary of the school was informed of an order superseding the managing committee of the school and appointing the Additional District Inspector of Schools, Burdwan, the respondent No. 4 requested the Secretary of the school to hand over charge of the school to him.

7. The petitioners' contention is that the respondent No. 2 had no authority, power or jurisdiction to appoint the respondent No. 4 as the administrator. According to the petitioners, u/s 36 of the West Bengal Secondary Education Act, 1950, the powers of the Board are confined to direction, supervision, development and control of Secondary education. This supervision, the petitioners contend, should be confined to inspection and issue of directions and cannot extend to taking of disciplinary action by way of supersession of the Managing Committee of the school and appointment of an administrator. It is further contended that the disciplinary powers of the Board are vested in the Executive Council of the Board. At the material time there was no Executive Council of the Board, and the Administrator of the Board had no authority, power or jurisdiction to appoint the respondent No. 4, the Administrator of the school. It is further alleged that the supersession of the managing committee was contrary to rules of natural justice, as no adequate opportunity was given to the managing committee to make representations against the order of supersession and reliance was placed on the report of the Enquiring Officer, though the said report was not made available to the petitioners. It is on the grounds mentioned above that a rule nisi was issued and the learned Advocate for the petitioners argued that this rule nisi should be made absolute.

8. In support of his contentions, the learned Advocate for the petitioners referred to the preamble to the West Bengal Secondary Education Act, and argued that the object of the Act was to provide for the regulation, control and development of Secondary education in West Bengal. The object of the Act, it was argued, was to be achieved and could be achieved, by inspection and issue of necessary directions. It was further argued that the powers conferred on the Board were confined to granting of affiliations and to withdrawing the same, where necessary. In other words, the two points within which the powers under the said Act could be exercised by the Board were granting of affiliation to existing institutions, and withdrawing such affiliation, if necessary. In between these two points the Board could, it was argued, exercise its control over secondary education by inspecting the manner and method of imparting education, and also by issuing directions for the purpose. The Board had no power under the said Act, it was argued, to take disciplinary action against the managing committee of

a school, nor had the power to supersede a managing committee and appoint an administrator in its place.

9. The next contention raised on behalf of the petitioners was that supersession of the managing committee was disciplinary action taken by the Board; and the act of supersession was a quasi-judicial act, and the order of supersession was made without giving an opportunity to the managing committee, to make representations against the order. It was further urged that in making the order of supersession reliance was placed on a report of inspection, a copy of which was not furnished to the managing committee to enable it to deal with the charges made in the report. For these reasons, it was argued, the order of supersession was made in violation of the principles of natural justice.

10. The next contention on behalf of the petitioners was that all correspondence including the letter containing the order of supersession were signed by some body for the Secretary of the Board. The Secretary of the Board, it was argued, had no power to delegate his functions and therefore the order of supersession itself was bad.

11. The next contention on behalf of the petitioners was that under the Act, the Board had the power to control and regulate secondary education, but it had no power to expropriate the property of the school. Under the garb of supersession of the managing committee; there has been deprivation of property owned by the school committee. This, it was argued, could not be done as it violated Article 19(1)(f) and 31 of the Constitution.

12. It was strenuously argued by learned Advocate for the petitioners that the control vested in the Board under the said Act, was confined to the teaching level at the schools. In other words, the Board could exercise its control over the administration of the school.

13. Before proceeding any further it is necessary to refer to the judgment of Sinha, J. in *Makhanlal Chakravarty v. S. K. Chatterjee and others*, (supra), which has occasioned this reference. In that case a Boy's High School was established for the education of refugee children. A substantial part of the cost of running the school was borne by the State of West Bengal. The school was administrated by a managing committee and it received recognition from the University of Calcutta. Owing to certain complaints received by the Board of Secondary Education about the Headmaster, and the members of the managing committee, an inspection of the school was directed by the Board. A report was also received, from the Financial Adviser to the Refugee and Rehabilitation Department of the Government of West Bengal, that inspection of the accounts of the school disclosed a serious state of affairs as the school maintained no cash book, the muster-rolls contained forged entries, large sums were drawn for the girls section before recognition of this section by the Board, no attendance register for 1950 was available for the section, false certificates were issued for irregular withdrawals and disbursements of funds, and finally, out of Rs. 25,000/-

sanctioned by the Government for construction of building, a sum of Rs. 15,000/- had been advanced without even inviting tenders for construction. The Inspecting Officer made a report that the managing committee was unconstitutional, that the President had submitted his resignation and migrated to Calcutta and was not attending meetings, that there were other members who were not entitled to be members or had ceased to have the requisite qualifications, but still continued to act as members, that there were serious instances of maladministration, that students were admitted in excess of the permissible limit, with the result that classes were shown to exist but there was no available space in which such classes could be held, that the school purported to impart education in subjects for which there were no teachers. The report also contained other serious charges. On this report the Executive Council of the Board appointed Adhoc committee, which was directed to remove the Headmaster and reconstitution of managing committee. This Adhoc committee took possession of the school and started running the same. It was in these facts that an application was moved under Article 226 of the Constitution for a writ in the nature of mandamus directing the respondents not to give effect to the order appointing the Ad hoc committee and also to show cause why the said order should not be recalled, withdrawn or rescinded and for other reliefs. Sinha, J. held that supervision as contemplated by Section 36(2)(c) of the Act, meant supervision and directions in the widest sense, and that the Board had been given the power to do all acts as it might consider necessary for the purpose of such directions and supervision. It was further held that the object of the Act was to provide for regulation, control and development of secondary education, and for that purpose the Board had been given the widest powers necessary to carry out that object. It was therefore held that the Board had the power to issue directions for removing a managing committee which had been mismanaging the affairs of a secondary school, and was not properly constituted. It was further held that the Board had the power to reconstitute the managing committee according to the rules, and as an interim measures, to appoint an Ad hoc committee to run the administration until the managing committee had been properly reconstituted. The effect of this finding of Sinha, J. is that the provisions of the Act in Section 36(1)(c) had been held to include power of the Board to supersede a managing committee of a school, and appoint an Ad hoc committee as an interim measure, until a managing committee properly reconstituted comes into existence.

14. To turn now to the contentions raised by the learned Advocate for the petitioners. The first contention was that Sinha, J. was wrong in holding in Makhanlal's case (supra) that sub-section (2) of Section 36 of the Act was merely illustrative of the powers conferred by sub-section (1) of Section 36. It was argued that the powers conferred by the various clauses under sub-section (2) of Section 36 are exhaustive, and not merely illustrative, as was held by Sinha, J. In support of this construction of sub-sections (1) and (2) of Section 36 of the Act reliance was placed upon a decision of the Judicial Committee in (2)

King Emperor v. Shibnath Banerjee and others, LR 72 IA 241. In that case in upholding the validity of Rule 26 of the Defence of India Rules, the Judicial Committee held that the function of sub-section (2) of Section 2 of the Defence of India Act was merely illustrative and the rule making power under the Act was conferred by sub-section (1) and the "Rules" which were referred to in the opening words of sub-section (2), were the Rules which were authorised by and made under sub-section (1), and also that the provisions of sub-section (2) were not restrictive of sub-section (1). Relying upon this decision it was argued that there was specific provision in sub-section (1) of section 2 of the Defence of India Act which authorised and validated Rule 26 of the Defence of India Rules, but there was no such provision in the Act with which we are concerned. There is hardly any force in this contention. Even if sub-section (2) of section 36 of the Act is not held to be illustrative of the powers by sub-section (1), the order superseding the managing committee could be upheld the powers conferred by sub-section (1) of Section 36 of the Act on the same principles on which the Judicial Committee upheld validity of Rule 26 of the Defence of India Rules. The Judicial Committee took notice of the words "without prejudice to the generality of the powers conferred by sub-section (1)" which appeared in sub-section (2) of section 2 of the Defence of India Act and it was, therefore held that provisions of sub-section (2) of the Defence of India Act are not restrictive of sub-section (1) of that Act. In this case also the sub-section (2) of Section 36 of the Act opens with the following words : "In particular and without prejudice to the generality of the foregoing power". The powers conferred by sub-section (1) of Section 36 of the Act, it was argued by the learned Advocate for the said respondent, were wide enough to include an order for supersession of a managing committee and appointment of an administrator to carry on the functions and duties of such a committee in running the school. It is however not necessary in this case to rely upon or invoke the powers conferred by sub-sections (1) and (2) of Section 36 to uphold the validity of the order superseding the managing committee of the school. Rules have been framed which expressly confer upon the Board the power to supersede the managing committee of a school. I shall presently refer to these Rules.

15. The learned Advocate for the petitioners next relied upon a decision of the Supreme Court in (3) Bisheshwar Dayal Sinha Vs. University of Bihar and Others, , and submitted that the decision in that case fully covered his clients' contentions in this application. Since reliance was very strongly placed on this decision, it is necessary to go into the facts and the questions of law involved in that case. A writ petition was filed by the appellant challenging the validity of an order issued by the Vice-Chancellor of the Bihar University directing reconstitution of the Governing Body of a College, and also challenging the validity of certain statutes framed by the Vice-Chancellor, under which the said order was purported to have been made. The appellant's contention was that the new statutes, framed by the Vice-Chancellor, were ultra vires his authority, and the impugned order passed in pursuance of these new statutes was, therefore,

illegal and void. The College was an educational institution which was admitted by the Bihar University as a College, as defined in Section 2(d) of the relevant Act. The appellant was elected Secretary of the Governing Body on June 3, 1961 and his term of office was to be three academic sessions and as such it was to last up till May 31, 1964. But by the impugned order passed by the Vice-Chancellor on January 13, 1963 the appellant was removed from the office of secretary, and another person was appointed in his place. Thereupon the appellant moved a writ petition which ultimately went up in appeal to the Supreme Court. The question before the Supreme Court was whether statute 2(4) and statute 3(1) framed by the Vice-Chancellor were valid. The validity of the order of the Vice-Chancellor directing reconstituting of the Governing Body of the College depended on the validity of the statute under which this order was made. The Supreme Court held that the statute 2(4) was inconsistent with the provisions of the Bihar State University (Patna, University of Bihar, Bhagalpur and Ranchi) Act, 1960, and therefore it was invalid. This statute purported to authorise the Vice-Chancellor, to amend or revise the Constitution of the Governing Body of a College, wherever necessary. This power was held to be inconsistent with section 30(d) of the said Act. It was a power which could be exercised u/s 30(c) of the said Act, but that would have relation only to collegiate institutions started by the University itself and had no relevance to affiliated Colleges. It was further held that if the said statute 2(4) had merely authorised the Vice-Chancellor to lay down conditions as to how the Governing Bodies of the affiliated Colleges should be constituted, it would have been a different matter. The University could effectively bring about a change in the composition of the Governing Bodies of affiliated Colleges, if necessary. But that must inevitably take the form and prescribing general conditions and leave it to the affiliated Colleges to comply with such conditions. Non-compliance with the conditions laid down by the University, it was held, might entail the liability to be disaffiliated, but that was different from giving a power to the Vice-Chancellor to make necessary changes in the Governing Bodies of affiliated Colleges. It was for this reason that it was held that the power conferred by statute 2(4) was inconsistent with Section 30(d) of the said Act. Regarding the order made by the Vice-Chancellor it was held at page 606 of the report :

The basis on which a Governing Body should be constituted is very different from nominating several persons on the said Governing Body. It is the latter course which has been adopted by the Vice-Chancellor and which is inconsistent with Section 30(d) of the Act. At this stage, it is necessary to add that the course adopted by the Vice-Chancellor in the present case is also inconsistent with statute 2(4) itself. The said statute merely authorises the Vice-Chancellor to amend or revise the constitution of the Governing Bodies of admitted colleges whenever necessary, and as we have already held, even the conferment of this power is ultra vires the statute. But what the Vice-Chancellor has done has gone beyond even statute 2(4), he has not only amended or reviewed the Constitution of the Governing Body, but has also nominated certain

person on it. Thus, this action of the Vice-Chancellor suffers from the double infirmity that it is inconsistent even with statute 2(4) and is purported to have been issued under statute 2(4) which itself is invalid." It will thus be seen that the facts and the question of law involved in this case are entirely different from the facts and the question of law with which we are concerned in this reference. The order made by the Vice-Chancellor was held to be invalid, because the statute under which this order was made, was itself held to be ultra vires the provisions of the relevant Act. The provisions of the two Acts, namely, the University of Bihar Act, 1951, and the Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Act, 1960, are by no means pari material with the provisions with which we are concerned in this reference, namely, the West Bengal Secondary Education Act, 1950. The object of the University of Bihar Act, 1951, is to furnish a comprehensive code to establish and incorporate and affiliating-cum-teaching University in the State of Bihar at Patna, and the object of the Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Act, 1960, is to help the establishment and incorporation of affiliating-cum-teaching Universities at Patna, Muzzaffarpur, Bhagalpur and Ranchi in the State of Bihar. These two statutes, therefore, were exclusively concerned with higher education and the establishment of Universities. The object of the West Bengal Secondary Education Act, 1950, on the other hand, is to provide for the regulation, control and development of secondary education in West Bengal. Then again the order made by the Vice-Chancellor on January 13, 1963, directing the reconstitution of the Governing Body of the College was made under statute 2(4) framed by the Vice-Chancellor and the vires of this statute was challenged by the appellant. But in the instant case now before us, although the petitioners have challenged the validity of the order superseding the managing committee, the vires of any provision of the Act or the Rules framed thereunder, under which the order of supersession has been made, have not been challenged in the petition. the decision of the Supreme Court, therefore, is of no assistance to the petitioners as the facts and the law involved in that case are entirely different from that facts and the law involved in this reference.

16. Learned Advocates for the respondents other than respondent No. 6, contended that u/s 4(b) of the West Bengal Secondary Education (Temporary Provisions) Act, 1954, upon supersession of the Board of Secondary Education, all the powers of the Board as also all the powers of the Executive Council u/s 37 of the Act became vested in the Administrator, who therefore, had the authority to exercise not only the powers which the Board could exercise, but also the powers which the Executive Council of the Board could exercise under the Act. It was argued that the order of supersession dated January 24, 1962, was an order of S.K. Mitra, the Administrator, who was competent to exercise all the powers of the Board, the Executive Council or any Committee or Sub-committee or the President of the Board.

17. It was next argued by the learned Advocate for the said respondents that u/s 37(1)(k) of the Act, the Executive Council of the Board had the power to take

such disciplinary action as it thought fit against high schools. The power to take disciplinary action, it was argued, included the power to supersede the managing committee of the school. Therefore, it was argued, the order of supersession was validly made by the Administrator. It was next argued that Section 36(2)(c) of the Act conferred upon the Board the power to supervise the administration of high schools by means of inspection and the issue of directions. Power of supervision, it was argued, included the power to control the administration of high schools by the issue of directions. Therefore, there was ample power under the Act to control the administration of high schools and also to take disciplinary action against high schools for the purposes of the Act, which are regulation, control and development of Secondary education. One of the objects of the Act being the control of Secondary education, such control included the power to supersede the managing committee of the school, as that was essentially necessary for the purpose of supervising the school administration. In support of this contention reliance was placed on the Special Bench decision of this Court in (4) Nripendra Nath Bagchi Vs. Chief Secretary, Govt. of West Bengal, , in which it was held that there could be no real control without powers to enforce or to take disciplinary action and that there could be no control unless it was accompanied by the power to take disciplinary action against persons intended to be controlled. In our opinion, this contention of the learned Advocate for the respondents is well founded. The object of the Act being what it is, the power to take disciplinary action cannot be denied to the Board or withheld from it.

18. It was next contended by the learned Advocate for the said respondents that under the Rules framed by the Government of West Bengal, specific powers have been conferred upon the Board to supersede a managing committee, that has not been functioning properly, and to set up an Ad hoc committee. It was argued by the learned Advocate for the said respondents that the rules were framed on September 19, 1960, in exercise of the powers conferred by Section 62 read with Section 61 of the Act, and the order of supersession was made by the Administrator on January 24, 1962, and this order was communicated to the Secretary of the school by a letter dated February 3, 1962. It was therefore argued that the order of supersession was made under Rule 6 of the Rules which are as follows :

6. The constitution of the Committee of all schools shall be subject to the approval of the Board of Secondary Education which retains the power to approve of special constitution of Committees in special cases or classes of cases, and also to supersede a Managing Committee that has in its opinion not been functioning properly and to set up and Ad hoc committee or to appoint an Administrator to exercise the powers of the Committee.

In the case of aided schools, the constitution of the Managing Committee shall be forwarded to the Board of Secondary Education through the Director of Public Institution whose observation on the personnel shall be considered by the Board before the Board approves of the Committee.

Learned Advocate for the said respondents argued that quite apart from the powers conferred upon the Board and its Executive Council by Section 36(2)(c) and Section 37(1)(k) of the Act, Rule 6 conferred upon the Board the power to supersede a managing committee. There is, therefore, no scope for argument that the Board (or the Administrator after supersession of the Board) had no power to supersede the managing committee. In our opinion, this contention on behalf of the said respondents is well founded. The Rules are statutory Rules, framed u/s 62 read with Section 61 of the Act, and Rule 6 quoted above, in terms provided for supersession of the Board in appropriate cases. It is to be noticed however that Sinha, J. considered the question of validity of an order superseding the managing committee in Makhanlal Chakravarty's case, (supra), long before the promulgation of the said Rules in September, 1960. But even without the Rules Sinha, J. came to the conclusion that the Board had the power u/s 36(2)(c) of the Act to remove a managing committee and to appoint an Ad hoc committee in its place. Having regard to the promulgation of the said Rules, it is not necessary for us to express any opinion on the view of Sinha, J. in Makhanlal Chakravarty's case, (supra), and we refrain from doing so. But we must notice, however, that the attention of Banerjee, J. was not drawn to the said Rules, and we have no doubt that if the attention of the learned Judge was drawn to the said Rules, there would have been no occasion for this reference. It is to be observed that though the petitioners have not challenged the vires of the said Rules in the petition, learned Advocate for the petitioners advanced an argument from the Bar that the said Rules were invalid, as there was no provision in the Act for framing Rules to give effect to Section 36(2)(c) of the Act by providing for an order by the Board for superseding the managing committee of a school. We cannot accept this contention as Section 62 read with Section 61 of the Act expressly provides for framing of Rules. Furthermore, Sections 36(3) (a) and (b) confer very wide powers on the Board to make Regulations and Bye-Laws for exercise of the powers conferred on the Board by Section 36 and for any matter for which the Act requires provision to be made by Regulations and Bye-Laws.

19. It was next contended by the learned Advocates for the said respondents that there was no substance in the petitioners' contention that the supersession order had the effect of expropriation of property under the garb of superseding the managing committee of the school. The petitioner's contention was that all the properties in the use of the school, both movable and immovable, belonging to the managing committee, the members of which were the owners of such property. If the managing committee was allowed to be superseded, the members thereof would be deprived of their property rights. The order of supersession, therefore, it was argued, would be void as it offended Articles 19(1) (f) and 31(1) and (2) of the Constitution. In support of this contention reliance was placed by the learned Advocate for the petitioners on Halsbury, 2nd Edn., Vol. IV, Pp. 482-83, arts. 877-879.

20. I must at once point out that there is no averment in the petition that the

members of the managing committee are the owners of the properties in the use of the school. The contention raised by the learned Advocate for the petitioners from the Bar, has not been raised in the petition the grounds set out under paragraph 34 thereof, that the order of supersession is bad as it is violative of articles 19 (1) (f) and 31 of the Constitution. The petitioners therefore ought not to be allowed to raise this question in this reference. But even if this question is allowed to be raised we are of opinion that there is no merit in this contention. The members of the managing committee are not the owners and proprietors of the properties which are in the use of the school. No right of ownership vests in the members of the committee, nor can any such right be exercised by them. The passages in Halsbury relied upon by the learned Advocate for the petitioners do not support the contention raised by him. On the contrary, the principles laid down in Halsbury make it clear that the members are only entitled to manage the property for the benefit of the school.

21. Our attention was drawn by the learned Advocate for the said respondents to a decision of the Supreme Court in (5) Sri Dwarka Nath Tewari and ORs. v. State of Bihar and others, AIR 1959 SC 249, in which this very question was raised and it was held at page 253 of the report as follows :

As already indicated, proceeding on the assumption that the land and the building of the school, are vested in the petitioners as the Managing Committee of the school, have the petitioners been divested of their rights by authority of law under Article 31(1) of the Constitution? If the amended Article 182 of the Code, extracted above, is law within the meaning of the Article aforesaid of the Constitution, the petitioners cannot have any just complaint if they have been or are being deprived of those properties, because it is clear that the petitioners are holding the properties not in their individual absolute rights but only as trustees, for the purpose of the school. They have the properties of the school. They have the properties vested in them because they are the Managing Committee.

Reference was also made to another decision of the Supreme Court (6) The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, , on which the Supreme Court considered the question if the Board of Trustees of the College could claim rights of ownership in respect of the property which was under its management, and held at page 472 of the report as follows :

Now the question is - is the impugned legislation bad on the ground that it violates the right of the petitioners under Article 19(1)(f)? The property for the protection of which Article 19(1)(f) is invoked belonged either to the Board or to the members composing the Board at the date of dissolution. In either event, on the terms of Section 5 of the Societies Registration Act, 1860, the property was to be deemed to be vested in the governing body of the Board. There could be no doubt that if the Board was dissolved by competent legislative action, and in view of our conclusions on the first point raised it must be held that this had taken place, the Board would cease to exist and having ceased to exist cannot

obviously lay any claim to the property.

22. In that case the Board of Trustees was registered under the Societies Registration Act, 1860, and the conclusion of the Supreme Court was that during the subsistence of the Society the right of the members thereof did not acquire any beneficial interest in the property. It was further held that dissolution of the old Board, and creation of a new one by legislation, did not fall under Article 31(2) of the Constitution and could not be judged by the tests laid down therein, though the ownership of property which was vested in the old Board was by operation of law transferred to a new Board, the old Board having no further right or interest with regard to the property of the institution. On this question reliance was also placed on a Bench decision of the Patna High Court, reported in (7) Bhim Chandra Mahto and Others Vs. Deputy Director of Education (secondary) and Others, , in which while considering a similar question, namely, if the supersession of the managing committee of a school and the appointment of an Ad hoc committee in its place amount to an infraction of the fundamental right guaranteed by Article 19(1)(f) and Article 31 of the Constitution, it was held that the management of the property was for the time being vested in the managing committee, no individual members of which could claim any vested right in the property and in fact no member had any right to hold and dispose of the property. The properties vested not in the individual members, but in the managing committee which was not a permanent body. Such a committee, it was held, was liable to reconstitution from time to time according to the rules in vogue in that school, and it was further held that if it was the managing committee in which the property of the school vested, then there was a managing committee, namely, the Ad hoc committee, in which the property would be deemed to have vested after the supersession of the old managing committee.

23. In our opinion, on the basis of the decisions discussed above the law on this question is well settled, namely, that members of the managing committee of a school have no individual and independent right of ownership to the property, the management of which for the time being vests in the managing committee as a whole. Individual members of a committee or the committee taken collectively, if it is not registered under the Societies Registration Act, have no vested rights of ownership of the property. Nor are the members of the committee the owners of the property which they manage for the benefit of the school. The right of management of the property for the benefit of the school remains vested in the members so long as they constitute the managing committee. If by operation of law or an order validly made, the members cease to constitute the managing committee, they would undoubtedly be deprived of the right to manage the property, but such members cannot claim that they have been deprived of the rights of ownership of such property, as the members of the Managing Committee, which in this case is not registered under the Societies Registration Act, never had any such right. This contention of the learned Advocate for the petitioners must, therefore, be rejected.

24. The next contention of the learned Advocate for the petitioners was that the order of supersession was bad as it was made in violation of the principles of natural justice. It was argued that no opportunity was given to the managing committee to make representations against the proposed order of supersession. It was further argued that the report of the Enquiring Officer, on which reliance was placed, in making the order of supersession was not disclosed or supplied to the petitioners. Therefore the order of supersession, it was argued, was void and must be struck down.

25. This contention was sought to be repelled by the learned advocates for the said respondents by contending that the question of violation of the principles of natural justice could not be raised by the petitioners, as they have not asked for a writ of Certiorari. The only writs prayed for by the petitioners are the writs of mandamus and quo warranto. That being so, it was argued, it was not open to the petitioners to contend that the order of supersession was a quasi-judicial order and was liable to be quashed by a writ of Certiorari.

26. We are, however, not impressed by this contention of the learned Advocates for the said respondents. It is true that a writ of Certiorari has not been asked for in this petition, and the only writs asked for are the writs of mandamus and quo-warranto. But the failure or omission on the part of the petitioners to ask for appropriate writs and orders in a writ petition, would not deprive them of the right to relief, if a case for such relief has been made out in the petition. The law on this question is now well settled.

27. The question still remains, however, if the order should be treated as an administrative order, in which case the question of the violation of the principles of natural justice cannot be raised by the petitioners, or whether the order should be treated as a quasi judicial order and should be struck down for violation of the principles of natural justice.

28. In support of the contention that the order was an administrative order, the learned Advocates for the said respondents relied upon the decision of the Supreme Court in (8) *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, . In that case the validity of an order appointing an Executive Officer of a municipal committee and vesting in him all the powers and duties of the committee to the exclusion of the President, Vice-President, or the Secretary, was challenged. But in that case, however, the principal prayer was for a writ of Certiorari for quashing the impugned order and there was also a prayer for a writ of mandamus. It was held that in considering whether an order should be regarded as a quasi-judicial order or an administrative order, it is to be ascertained whether the statute expressly or impliedly imposed upon the authority making the order a duty to act judicially. It was also held that the question whether or not there was a duty to act judicially must depend in each case on the circumstances of that case and the construction of the particular statute. The Supreme Court affirmed the tests laid down by it in (9) *Province of Bombay Vs. Kusaldas S. Advani and Others*, which are as follows :

(i) If a statute empowers the authority, not a Court in the ordinary sense, to decide dispute arising out of a claim made by one party under the statute and this claim is opposed by another party and the authority is required to determine the respective rights of the parties who are opposed to each other, there is a *lis* and *prima facie* it is the duty of the authority to act judicially.

(ii) If the statutory authority has power to do any act when will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

29. Relying upon these tests the Supreme Court held that there was no question of any contest between two contending parties and therefore there was no *lis* in the sense in which the word was understood generally. On a construction of the statute in that case the Supreme Court also held that the second test was not satisfied and that there was no duty on the State Government to proceed judicially before making the order. Relying upon this decision it was argued that there was nothing in Sections 36 and 37 of the Act, or in Rule 6 of the Rules quoted earlier in this judgment, to indicate that either of the two tests laid down by the Supreme Court is satisfied.

30. Reliance was also placed on an earlier decision of the Supreme Court in (10) *Karanpura Development Company Limited v. Kamakshyanarain Singh and others*, 1956 SCA 591. In that case, however, the question as to under what circumstances an order could be treated as a quasi-judicial order was not considered. Reliance was also placed on another decision of the Supreme Court in (11) *Nagendranath Bora v. The Commr. of Hill Division*, 1958 SCA 572, in which it was held that whether an administrative body or authority functioned as a purely administrative one or in a quasi-judicial capacity must be determined in each case on examination of the relevant statute and the rules framed thereunder.

31. In our opinion the contention of the learned Advocate for the said respondents that the order made by the Administrator superseding the managing committee was not a quasi-judicial order as the statute did not require the Board or the Administrator to act judicially, is well founded. There was no *lis* between two contending parties and there is nothing either in the Act or the said Rules, which requires the Board to proceed judicially before making an order of supersession.

32. But even if it is held that the Board was to act in a quasi-judicial capacity or that the order of supersession made by the Board is a quasi-judicial order, we do not think that the petitioners' contention that principles of natural justice have been violated, can be upheld. In paragraph 17 of the petition the petitioners have alleged that on December 28, 1961, a letter was addressed to the Secretary of the school requesting him to show cause within ten days from the

receipt of the letter as to why the existing managing committee should not be superseded, and an administrator appointed in its place on certain specific grounds, which were mentioned in the said letter. In paragraph 18 of the petition the petitioners alleged that on January 8, 1962, a representation was addressed to the Secretary, Board of Secondary Education, repudiating the allegations regarding irregularities. It is quite clear that the petitioners were informed of the charges on the basis of which an order superseding the managing committee was proposed. Further, the petitioners' case is that they did make representations to the Secretary of the Board against the charges. It cannot, therefore, be contended by a petitioners that they got no opportunity to make representations against the proposed order of supersession and for that reason rules of natural justice had been violated. On the allegations in the petition itself it seems to us that there is no substance in the contention that rules of natural justice have been violated in making the order of supersession.

33. Turning now to the other contention on behalf of the petitioners, namely, that the report of the Enquiring Officer was not furnished to the petitioners, and that this report should have been furnished to enable them to deal with the contents of the report, we are of the opinion that there is no merit in this contention either. The report is the report of the Additional District Inspector of schools, Burdwan and is annexure "X" to the affidavit-in-opposition affirmed by Amalendu Gupta on July 31, 1963. A perusal of the report makes it clear that all the findings of the Enquiring Officer relate to the conduct of the Headmaster of the school, and in this application we are not dealing with an order removing or dismissing the Headmaster. There is nothing in the report about the members of the managing committee or the committee as a whole. Therefore, even if this report, was supplied to the petitioners and the respondents Nos.6, 7 & 8, it would not have in any way helped them in making out grounds for not making an order superseding the managing committee of the school. The Secretary of the school was not present at the time when the enquiry was held by the Enquiring Officer. The findings of the Enquiring Officer are all directed against the Headmaster of the school who, it is alleged in the report, in various ways obstructed the Enquiring Officer in holding an enquiry. In our opinion, the failure to supply the report of the Enquiring Officer to the petitioners did not in any way prejudice the petitioners in making the representations which they made, and there was no violation of the principles of natural justice on that account.

34. There remains only one other contention of the learned Advocate for the petitioners to be disposed of. It was argued that the order of supersession was purported to be made by the Secretary of the Board and this order was made on February 3, 1962, but it appeared from the letter dated February 3, 1962, addressed to the Additional Inspector of Schools, Burdwan, a copy of which was forwarded to the Secretary of the School, that the letter which purported to be the order itself was not signed by the Secretary, but by some body else for and on behalf of the Secretary. It was argued that the Secretary had no authority to delegate his functions to any body else, and as the said letter dated February 3,

1962, which according to the petitioners, was the order itself, was signed not by the Secretary, but by some body else for and on his behalf the said order was bad. There is no substance in this contention at all. The order of supersession is dated January 24, 1962, and this order was made by S. K. Mitra, Administrator of the Board of Secondary Education. This order is annexure "X(5)" to the said affidavit affirmed by Amalendu Gupta. It is quite plain that the order was made by the Administrator of the Board and not by the Secretary, as contended by the learned Advocate for the petitioners. The letter dated February 3, 1962, was nothing but a communication of the order of the Administrator of the Board. This letter is by no means the order itself. The communication of the order of the Administrator of the Board is a mere ministerial act and there is no force in the contention that this communication of the order should be treated as the order itself, and must be struck down as bad as it was signed by some body for the Secretary of the Board, and not the Secretary himself.

35. For the reasons mentioned above, we hold that this application is misconceived and is accordingly dismissed with costs to the respondents other than the respondent No. 6, hearing fee for each set of contesting respondents other than the respondent No. 6 being assessed at two gold mohurs. The rule nisi issued therein is discharged.

Bose, C.J.

36. I agree.