

(2015) 01 CAL CK 0050

In the Calcutta High Court

Case No : Writ Petition 30852 and 32372 (W) of 2014

Patha Bhavan Society and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Citation : (2015) 1 CALLT 418

Hon'ble Judges : Dipankar Datta, J.

Bench : Single Bench

Advocate : Subir Sanyal and Sumouli Sarkar, for the Appellant; Kamalesh Bhattacharya and Bratati Roy Chowdhury, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dipankar Datta, J.—These two writ petitions have been heard together since they relate to the affairs of Patha Bhavan, Dankuni, Howrah (hereafter the school) and shall stand disposed of by this common order. W.P. 30852(W) of 2014, at the instance of the society claiming to have established the school and its office-bearers, challenges an order dated April 23, 2014 passed by the Administrator of the West Bengal Board of Secondary Education (hereafter the Board) deferring consideration of the prayer for grant of special constitution in favour of the school in terms of Rule 8(3) of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 (hereafter the Management Rules).

2. W.P. 32372(W) of 2014 is at the instance of an association of teachers of the school complaining of alleged illegal, arbitrary and whimsical acts of the management of the school. They seek appropriate orders to set things right.

3. The managing committee of the school was last reconstituted in terms of the provisions of the Management Rules on March 13, 2011. It had life till March 12, 2014. By a general order of the Board, the tenure of the managing committees of all aided and unaided schools which had expired was extended till August 31,

2014. However, it has been ascertained that thereafter, there has been no further extension.

4. The President of the society had prayed before the Administrator of the Board vide request letters dated April 24, July 18 and August 18, 2013 for grant of special constitution. Such prayers were not considered resulting in presentation of a writ petition before this Court by the society. The same was disposed of by a coordinate Bench on January 15, 2014 directing the Administrator of the Board to take an appropriate decision on the prayer of the society contained in the request letter dated April 24, 2013 by passing a reasoned order in accordance with law.

5. It is in purported compliance with such order that the Administrator in the impugned order dated April 23, 2014 held as follows:

"Findings:

The parties are heard at length. The main contention of the petitioner is that the Board has ample power to grant special constitution in the interest of the institution as per rule 8(3) of the Management Rules, 1969. It is alleged that they made several reminders to the Board for grant of special constitution for their school but without any fruitful result. According to them there is no bar to grant special constitution in favour of the institution.

It is true that there is a provision for granting special constitution in favour of the school as per rule 8(3) of the Management Rules, 1969. However recommendation of Commissioner of School Education is a condition precedent to granting special constitution in favour of the school.

In such circumstances the matter should be referred to the Commissioner of School Education for obtaining his views in the matter and on receipt of the necessary recommendation, the matter will be disposed of as per the direction of the Hon'ble Court."

6. While assailing the order of the Administrator of the Board, Mr. Sanyal, learned advocate for the society and its office-bearers contended that the Administrator committed gross error in holding that the recommendation of the Commissioner of School Education is a condition precedent for granting special constitution in favour of a school. Rule 8(3) of the Management Rules was referred to and it was submitted that obtaining the views of the State Government is an option open to the Board and if in any particular case the State Government chooses to remain silent, the Board cannot refuse to grant special constitution on the specious ground that the State Government has not recommended in favour of such grant.

7. The Board has not been represented. Mr. Bhattacharya, learned advocate representing the State and Ms. Mookherji, learned advocate for the petitioners in W.P. 32372(W) of 2014 did not advance any submission of worth that would persuade me to take a view contrary to what has been submitted by Mr. Sanyal.

8. For facility of reference, rule 8(3) is quoted below:

"(3) Notwithstanding anything contained in these rules, the Executive Committee shall have the power to approve, on the application of any Institution or class of Institutions, of the special constitution of a Committee in favour of such Institution or class of Institutions and in approving the special constitution of a Committee, the Executive Committee shall pay due regard to the recommendations of the Director, if any. While granting special constitution in favour of an Institution or a class of Institutions, the Executive Committee shall ensure that representation of the members of the teaching and the non-teaching staff, guardians and the member nominated by the Director or an officer authorized by him in this behalf, is made according to clause (iii), clause (v) and clause (vi) of Rule 6:

9. The words "if any" in rule 8(3) are significant. If such words were not there, I would have been inclined to hold that the Administrator was right in his understanding of the statutory provision. It is implicit in rule 8(3) that should there be a recommendation of the Director, either positive or negative, it would be the duty of the Executive Committee of the Board to consider such recommendation before it finally decides on the request of a school for grant of special constitution. The discretion to obtain recommendation from the Director is that of the Executive Committee but if such discretion is not exercised, there would be no scope for the Director to know that a recommendation is necessary from his end. In such view of the matter, the part of the impugned order observing that the recommendation of the Commissioner of School Education is a condition precedent for grant of special constitution prayed for by a school appears to be contrary to the spirit of rule 8(3) and, accordingly, is set aside.

10. To meet the ends of justice, I leave it open to the Administrator of the Board to seek the recommendation of the Commissioner of School Education in relation to the prayer of the society for grant of a special constitution in the light of the contents of the request letters dated April 24, July 18 and August 18, 2013 within seven days from the date of receipt of a copy of this order. The Commissioner, if at all his recommendation is asked for, shall have a month's time thereafter to give his recommendation. If the Commissioner gives his recommendation within the stipulated period, the Administrator of the Board shall proceed to consider the request of the society for grant of special constitution de novo and give his final decision within a period of 3 weeks from date of receipt of the relevant recommendation from the Commissioner. If the Commissioner fails to give his recommendation within the period stipulated, the Administrator shall immediately but not later than 2 weeks from date of expiry of the stipulated period give his decision as to whether a special constitution should at all be granted or not. In the event a decision is taken for grant of special constitution, follow up steps shall be taken without any delay. On the contrary, if the prayer/request for grant of special constitution is once again rejected, the

order must have the support of reasons and shall be communicated to the management of the school without any delay.

11. W.P. 30852 W) of 2014, accordingly, stands disposed of without any order as to costs.

12. I place on record Mr. Sanyal's submission that since the school is privately managed and privately funded, question of constituting the managing committee in compliance with the provisions of the Management Rules does not and cannot arise and such obligation imposed thereby has been challenged as ultra vires. However, since the point requires examination in depth and would require extension of opportunity to the respondents to file their counter affidavits and final decision thereon is likely to consume substantial time, Mr. Sanyal submitted that the point of vires may be kept open for being agitated by the school in future, if at all such occasion arises.

13. It is observed that since the writ petition has been disposed of without calling for affidavits, no opinion is expressed in relation to the issue relating to vires of the relevant rule(s) and it is left open for decision in future, if at all the occasion therefore arises.

14. The main grievance voiced in W.P. 32372(W) of 2014 by the teachers' association is that there is no valid managing committee of the school constituted in terms of the provisions of the Management Rules and that a defunct managing committee has been administering the affairs of the school illegally, arbitrarily and whimsically to the utter prejudice and detriment of the teaching staff.

15. Ms. Mookherji representing the teachers' association has contended that the duly elected managing committee had life till March 12, 2014 and by reason of the general order of extension could function till August 31, 2015; thereafter, there being no further extension, the Administrator of the Board ought to have intervened and directed appointment of an administrator to manage the affairs of the school including its administration. She has further submitted that the school is governed by the provisions of the West Bengal Board of Secondary Education Act, 1963 (hereafter the Act) and the rules/regulations framed thereunder and that in terms thereof, the school is required to employ a duly qualified Headmaster; however, the Headmaster who has been presently functioning is more than 60 years old and, therefore, cannot be allowed to continue as such. It is also submitted by her that as the Headmaster, without being duly qualified to function, has been arbitrarily issuing show-cause notices to a section of the teaching staff for wreaking vengeance in the absence of intervention by the Administrator of the Board, the Court may kindly intervene to restrain the Headmaster and the defunct managing committee from taking adverse decisions against the teaching staff.

16. Countering Ms. Mookherji's submissions, Mr. Sanyal contended that the teaching staff had been indulging in manifold activities detrimental to the interest

of the school in general and the students in particular and it is for the purpose of arresting such uncalled for and unwarranted activities that action had to be initiated. According to him, it is necessary for the management of the school to maintain an ambient atmosphere for the benefit of the students and their well-being and any interference would amount to encouraging the teachers to subvert discipline.

17. Having heard the rival submissions of Ms. Mookherji and Mr. Sanyal and considering the materials on record, it is clear that the managing committee which had life till March 12, 2014 (date of expiry of the term of 3 years) and could function till August 31, 2014 (the last date of general extension) cannot function beyond that date for the purpose of administration of the school affairs. The submission of Mr. Sanyal that the school is privately funded and privately managed and, therefore, to prevent a vacuum from being created the present managing committee may not be restrained to function, has failed to impress me. It is axiomatic that a managing committee constituted under the Management Rules has the authority to function for the initial period of 3 years and thereafter, if at all, for such extended period as it may be permitted by the Board. One of the terms and conditions of grant of recognition to the school by the Board required an undertaking to be given by the school that it would abide by all the rules, circulars, orders framed by the State Government and the Board. Although Mr. Sanyal could not throw light as to whether such undertaking was given or not, I presume that such an undertaking was given or else the recognition would not have continued since 1999. Pertinently, it is not the function of the Court exercising writ powers to infuse life into a defunct body or committee. That could be possible only at the instance of the Board or the State Government. There has been no extension of life of the managing committee by the Board beyond August 31, 2014 and, therefore, the managing committee must cease to function beyond 7 (seven) days from date. It is ordered accordingly. Within this period of 7 (seven) days, the defunct managing committee shall not take any policy decision or incur capital expenditure.

18. Notwithstanding the direction upon the Administrator of the Board to consider the prayer/request of the society for grant of special constitution, the Administrator shall immediately but not later than 7 (seven) days from date constitute an ad hoc committee for managing the affairs of the school and/or its administration and direct it to take steps to reconstitute the managing committee of the school in terms of the Management Rules. Such ad hoc committee shall, however, function subject to result of the decision to be taken by the Administrator in compliance with the order passed in W.P. 30852(W) of 2014. If the ad hoc committee finds that the Headmaster of the school is not qualified to function as such, it shall not allow him to function further and a teacher-in-charge may be appointed from amongst willing senior teachers of the school having requisite qualifications. If the prayer/request for grant of special constitution is declined by the Administrator, the ad hoc committee shall continue to function till such time the managing committee is reconstituted. On the

contrary if the prayer of the management of the school for grant of special constitution succeeds, the Administrator shall specify in such order the procedure for constitution of managing committee in terms of such special constitution and the date from which it shall commence functioning. In such event the ad hoc committee shall function till the new managing committee takes over.

19. While the ad hoc committee shall be entitled to ensure that the teaching and non-teaching staff maintain discipline and do what is required of them for the better interest of the school and the students, it would be eminently desirable should penal action, if at all proposed to be taken against them for proved misconduct, is allowed to be taken by the fresh managing committee which would be reconstituted either in terms of the Management Rules or in terms of the special constitution that may be granted, as the case may be. However, in exceptional cases of emergent nature calling for disciplinary action immediately, the ad hoc committee may take penal action subject to obtaining prior approval of the Administrator.

20. With the aforesaid directions, W.P. 32372(W) of 2014 is disposed of without cost.

21. Since this writ petition has been disposed of without inviting affidavit from the society, the allegations contained therein except to the extent of the managing committee of the school having become defunct after August 31, 2014, shall not be deemed to have been admitted by the society. Photocopy of this order, duly countersigned by the Assistant Court Officer, shall be retained with the records of W.P. 32372(W) of 2014.

Urgent Photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date.