

(1976) 04 CAL CK 0015

In the Calcutta High Court

Case No : Civil Rules No's. 1093-1095 (W) of 1975

Prasanta Kumar Ghosh

APPELLANT

Vs

Vice-Chancellor, University of Calcutta

RESPONDENT

Date of Decision : 02-04-1976

Acts Referred:

Calcutta University Act, 1966 — Section 100(1), 23, 23(1), 23(2), 23(3)
Calcutta University First Ordinance, 1966 — Ordinance 64
Constitution of India, 1950 — Article 226

Citation : (1976) 1 CALLT 53 : 80 CWN 854 : (1977) 1 ILR (Cal) 472

Hon'ble Judges : Amiya K. Mookerji, J

Bench : Single Bench

Advocate : R. Chowdhury, S.C. Bose, B.P. Banerjee, B. Sen, Ashim Ghose, Dipak Mitra and Lakshmi Gupta, for the Appellant; R.C. Deb, D. De, A.K. Basu, D.K. Basu and P.K. Roy and Mohitosh Majumder, Ramen Mitra and S.N. Chatterjee for Respondents 5-10, for the Respondent

Judgement

Amiya K. Mookerji, J.—These Rules are directed against the resolution passed by the Syndicate and the University of Calcutta dated January 16, 1975, superseding the Governing Bodies of the City College, Ram Mohan College and Ananda Mohan College and appointing Ad hoc Committees to carry on the administration of the above three colleges till the Governing Bodies of those colleges are constituted under Statute 93 of the Calcutta University First Statutes, 1966.

2. The Petitioner No. 1 is one of the Joint Secretaries of the Central Council of the Brahmo Samaj Education Society and is the Chairman of the Governing Bodies of the City College and Ananda Mohan College. He is also the Rector of the three colleges situated at 102/1 Raja Ram Mohan Sarani, viz. City College, Ram Mohan College and Ananda Mohan College. The Petitioner No. 2 is an Education Society known as "Brahmo Samaj Education Society" hereinafter referred to as the "Society" registered under the Societies Registration Act in the year 1905.

3. On July 18, 1888, Ananda Mohan Bose executed a Deed of Trust, whereby he conveyed certain property to Umesh Chandra Dutta and himself as Trustees, for the purpose of the City College situated at No. 13 Mirzapore Street, Calcutta and for such other purposes and subject to such conditions as the Council of the college might decide with the sanction of the Trustees. A Council was constituted about the same time. On July 19, 1888, the Trustees executed a mortgage to meet the costs of the reconstruction of the building. On March 20, 1905, a public institution known as "The City College Institution" was registered under the Societies Registration Act. One of the objects as stated in the Memorandum of Association is to take over the building and other properties, movable and immovable, of the City College and the School. The old City College and the Council of it ceased to exist and all its right, title, interest and authority were, vested in the City College Institution which became the proprietor under the trust. By a Deed of Conveyance dated March 27, 1915, the Official Trustee of Bengal, the then holder of the mortgage dated July 19, 1888, reconveyed the mortgage property to the said City College Institution. By a resolution dated April 23, 1917, the name of the City College Institution was altered to "Brahmo Samaj Education Society".

4. It appears from the rules and regulations of the said Society that the business of the Society shall be the acquisition and taking over of the City College and the School situated at Calcutta. The Council of the Society shall appoint a Governing Body of the college and the school under the Education Society. Section 1 of the constitution under the rules of the Society lays down the manner in which the Governing Bodies/Managing Committees of the Institutions are to be constituted.

5. On January 16, 1970, the Inspector of Colleges directed the Principal of the Ananda Mohan College to submit a certified copy of the Trust Deed or to produce the Trust Deed in original on or before January 20, 1970, failing which the University would presume that action would have to be taken in accordance with Statute 93 of the Calcutta University First Statutes, 1966, relating to reconstitution of the Governing Bodies of the aforesaid three colleges. On January 20, 1970, the Principal of the said college informed the Inspector of Colleges that the said college had never sought for the exemption u/s 100(1) of the Calcutta University First Statutes, 1966 on the ground that it was managed by the Trustees under a Trust Deed. The colleges were managed by a registered society viz. the Brahmo Samaj Education Society as such, it was not hit by the provision of Statute 93 of the Statutes, but it would come under Statute 100. In the said letter it was mentioned how the Governing Bodies of the colleges were formed. The Inspector of Colleges informed the Principal of the Ananda Mohan College that he was directed by the Vice-Chancellor of the University and the Syndicate to inform the Principals that the three colleges had come within the purview of Statute 100 of the Calcutta University First Statutes, 1966. On September 16, 1969, in view of the extreme financial difficulties, at an emergent meeting of the Central Council of the Society the said Council recommended the Society for handing over the management of the three colleges to the Calcutta

University or to the State Government. Thereafter, on October 11, 1969, the general members of the Society resolved to approach and request the University to appoint an Administrator or to take over the three colleges. In pursuance of the said resolution dated October 13, 1969, the Secretary of the Society wrote a letter to the Vice-Chancellor requesting him to appoint an Administrator or to take over the three colleges. The Deputy Inspector of Colleges by his letter dated February 12, 1970, informed the Secretary of the Society that the University could not accept the proposal for appointment of an Administrator or taking over the colleges. On March 14, 1971, the Society passed the following resolutions: (a) To close down the colleges from May 31, 1971; (b) To request the Government to take over the management of the colleges from June 1, 1971; (c) To request the University to appoint an Administrator. On January 3, 1973, Ram Mohan College was closed down by a public notification. It was, however, reopened on January 25, 1973. On April 23, 1974, the Council of the Society passed a resolution for separate registration of the three colleges and appealed to the State Government to take over the management of the colleges. Thereafter, by a resolution dated February 16, 1974, the teachers council of the City College requested the University authorities to hold an enquiry into the financial, academic and administrative affairs of the said colleges including the nature of the Trust Deed, if any and to take appropriate steps for proper administration of the said three colleges. Accordingly, an Enquiry Committee, appointed by the Syndicate of the University, held a thorough enquiry into the affairs of the said three colleges and submitted its report on August 19, 1974, wherein it was, inter alia, stated that the Governing Body of the City College was composed of sixteen members of which ten members were elected from B.S.E.S., Principals of Ram Mohan and Ananda Mohan Colleges, two teachers' representatives, a co-opted member (who was the chosen member of the Society) and the Principal the City College. There was no evidence that Umesh Chandra Dutta and Ananda Mohan Bose appointed the said Brahmo Samaj Education Society to act as the Trustees of the City Group of Colleges at 102/1 Raja Ram Mohan Sarani, Calcutta-9. The said Society had no valid legal claim to the building and properties of the City College since the B.S.E.S. failed to produce any satisfactory evidence as to its appointment as Trustees of the said college till the date and time of submitting the report. The B.S.E.S. utilised a sum of Rs. 3 lacs approximately received from the U.G.C. as grants to the City College for the construction of the non-resident students' centre in such manner as it might ultimately be treated as an absolute property of the B.S.E.S. The total accumulation of loan from the Staff Provident Fund account by the B.S.E.S. was Rs. 3,37,000 approximately upto 1972-73. The loan taken from the said Provident Fund account had been used for repayment of loans of the central fund of the B.S.E.S. The composition of the existing Governing Bodies was not such as might be desired or could be had. The Chairman was in the habit of exercising power not conferred on him by the Calcutta University First Statutes nor by the rules of the Brahmo Samaj Education Society. The Brahmo Samaj Education Society has conducted its relation with the Principal, City College, in a manner

which is definitely against the interests of the college and its proper development. The Society deliberately created difficulties for the teachers. The Society did not also derive any power from the Trust Deed or any legal enactments to perform such acts. Accordingly, the members of the Enquiry Committee recommended that inasmuch as the Governing Bodies of the City Group of Colleges housed at 102/1 Raja Ram Mohan Sarani had failed to establish that they could constitute the Governing Bodies under Statute 100 of the Statutes of 1966, the Governing Bodies of the said colleges were to be reconstituted as per Statute 93 of the Calcutta University First Statutes, 1966. The said reconstitution should be entrusted to the Ad hoc Committees after supersession of all the Governing Bodies and the said Ad hoc Committees would consist of the following:

(a) Three nominees of the Syndicate of whom one shall act as the Chairman who will be common to all three Ad hoc Committees.

(b) In addition to three nominees of the Syndicate, 2 elected representatives of the teachers and the Principal as Ex-officio Secretary for each college.

6. The said report of the inspection of the Enquiry Committee as prepared by the members of the Inspection and Enquiry Committee and the observations made therein by the Society and respective colleges were duly circulated to the members of the Syndicate for consideration. On January 16, 1975, after due and proper consideration of the said materials so placed before it, the Syndicate of the University by its resolution superseded the Governing Bodies of the said three colleges and appointed Ad hoc Committees for the said three colleges to carry on the administration of the colleges till the Governing Bodies of the said colleges were reconstituted under Statute 93 of the Calcutta University First Statutes, 1966, The Petitioners being aggrieved by the said supersession of the Governing Bodies of the three colleges moved this Court under Article 226 of the Constitution and obtained these Rules.

7. An affidavit-in-opposition in C.R. No. 1096(W) of 1975 has been filed on behalf of the University of Calcutta and affirmed by Amitesh Chandra Banerjee, the Inspector of Colleges of the University of Calcutta. In Sub-para. (1) of para. 3 of the affidavit-in-opposition it is stated that the Council of the Brahmo Samaj Education Society in its meeting held on March 20, 1973, presided over by none else, than Dr. P.K. Ghose the Petitioner No. 2, passed a resolution for registration of the City, Ananda Mohan and Ram Mohan Colleges into three registered societies, namely, City College Education Society, Ananda Mohan College Education Society and Ram Mohan College Education Society in accordance with a new Memorandum of Association. Therefore, the said Brahmo Samaj Education Society itself has changed the basis of the recognition under Statute 100 and cannot rely upon it and it is open to the University and the Syndicate to reconstitute the Governing Bodies under Statute 93. It is stated that the Enquiry Committee was set up for the purpose of investigating the affairs of the colleges in question upon due notices to and with the knowledge of the Governing Bodies.

The report of the Enquiry Committee upon which the answering Respondents and the Syndicate acted would leave no scope for any doubt that proper standard of teaching, training and consideration were not being maintained in the said colleges and the affairs of the said colleges were being managed improperly. The University and the Syndicate had and have the necessary powers, competence and jurisdiction to supersede the said Governing Bodies as has been done in the instant cases. The mismanagement of the affairs of the said colleges would also be evident from the auditor's reports for the years 1969-73.

8. In a supplementary affidavit filed on behalf of the University, the Trust Deed as well as some of the relevant documents have been annexed. The Memorandum of Association of the Brahmo Samaj Education Society has been annexed as annex. "P" by an affidavit of Ajit Kumar Das, a member of the Central Council of Brahmo Samaj Education Society affirmed on January 9, 1976.

9. Mr. Chowdhury, appearing on behalf of the Petitioners, contends that the University and the syndicate have no power and/or authority to supersede the Governing Body constituted in terms of the provisions of the Memorandum of Association of a society registered under the Societies Registration Act which managed the said three colleges. The Governing Bodies of the said three colleges being under the protection under Statute 100 of the Calcutta University First Statutes, the Respondents had no jurisdiction to supersede such Governing Bodies for the purpose of reconstitution of the same under Statute 93 of the said Statutes.

10. Mr. Dey, appearing on behalf of the University, contended that under the provisions of Section 4(11) read with Sub-section (2) or Section 23 of the Calcutta University Act, 1966, the University and the Syndicate have ample power to dissolve the Governing Body of any affiliated college. According to Mr. Dey, the power of supersession could also be exercised in cases of the Governing Bodies of the institutions which enjoyed the benefits under Statute 100 if it was found that there was a total financial bankruptcy of that education institution due to the mismanagement by the Governing Body. Mr. Dey further submitted that assuming that the three colleges had been managed by the Governing Bodies constituted according to the terms and conditions of Articles and Memorandum of a registered society, but such Managing Committees could not be allowed to continue when it was found upon a proper enquiry that there was mismanagement and maladministration in every sphere of these institutions. The Society itself was ready and willing to make over the management of the institutions to the University and repeatedly requested the Vice-Chancellor to take over the management.

11. In *University of Calcutta and Ors. v. Khagendra Nath Sen and Ors.* 79 C.W.N. 763 : (1975) 2 C.L.J. 132, Section 4, Clause (11) read with Section 23(2) of the Calcutta University Act, 1966, has been constructed by a Division Bench of this Court. It is held that the powers u/s 4, Clause (11) are wider in its scope and application than those u/s 23(2) and by its terms it confers powers on the

University to dissolve the Governing Body of a college and pending reconstitution of its Governing Body to appoint an Administrator of an Ad hoc Governing Body. Though the clause does not expressly refer to the circumstances which must exist before the power can be exercised, it contemplates the exercise of powers by the University necessary for discharge of its statutory functions, namely, to encourage, to extend, to co-ordinate and to promote the "research. This power of control over the colleges has been provided in various clauses of Section 4 like Clause (4) to (11). Accordingly, when the University is of opinion that the Governing Body of a college has not been validly constituted, the University is entitled to take action under Clause (11) of Section 4 dissolving the Governing Body and in its place appointing an Administrator or an Ad hoc Governing Body pending reconstitution of the Governing Body thereof in accordance with the Statutes. In taking such action no procedure has been provided in the Act or the Regulations and Ordinance 64 of the Calcutta University First Ordinances, 1966, has no application to the actions taken in such contingency. This power again is not provided in Sub-section (1) or Sub-section (3) of Section 23 of the Act as the existence of the Governing Body invalidly constituted has not at all far less specifically been contemplated under those sub-sections. Under Sub-section (2) of Section 23, the Syndicate has been conferred with all powers of the University not otherwise specifically provided for and also all powers necessary for giving effect to the provisions of the Act. The Syndicate thus under Sub-section (2) of Section 23 is entitled to exercise the powers of the University u/s 4(11) not otherwise specifically provided for, to give effect to the provisions of the Act, namely, control and higher education which in its application contemplates ensuring of a valid constitution of Governing Bodies of the colleges in accordance with the statutory provisions under the Act and the Statutes. The Division Bench further held that there was no question of any grant of benefit under Statute 100(1) by the University since it was a right conferred on the Governing Bodies by the Act and its Statutes and accordingly, there was no occasion for its revocation.

12. It was further observed that Clause (10) of Section 4, which is *pari materia* with Clause (XIV) of Section 23, contemplates temporary taking over of the management of any college for ensuring maintenance of proper standard of teaching. (Section 23(3) provides for dissolving the Governing Body of the college when the affairs of the college are being mismanaged to the detriment of the college as an effective educational institution pending reconstruction of the Governing Body thereof and for appointment of an Administrator or an Ad hoc Governing Body. In either of the two eventualities the Syndicate has to follow the procedure laid down in Ordinance 64 of the Calcutta University First Ordinances, 1966.)

13. The only point for consideration in these Rules is, whether a validly constituted Governing Body can be dissolved by the University in exercise of its powers u/s 4(11) read with Section 23(3).

14. No material was placed before me to show that the resolution of the Society passed in its meeting dated March 23, 1973, for registration of three colleges into three different education societies was given effect to. That being so, it cannot be said that the Society has changed the basis of the recognition under Statute 100.

15. In the instant case, it is not disputed that these colleges were managed by a registered society and the Governing Bodies of these colleges have been constituted in terms and conditions of the Articles and Memorandum of Association of the said registered society, viz. the Brahmo Samaj Education Society. Accordingly, under Statute 100(1) of the Calcutta University First Statutes, 1966, the Governing Bodies of these three colleges have been continued as such. The aforesaid position had been accepted by the University by a resolution of the Syndicate being University Resolution No. 40 dated June 26, 1970. In the report of the Enquiry Committee it has been pointed out that the Brahmo Samaj Education Society did not derive any power from the Trust Deed or any legal enactment to perform the functions of the Governing Bodies. Inasmuch as the Governing Bodies were not constituted democratically and frequently flouted the directives of the University, the Governing Bodies of the three colleges had failed to establish that they could constitute the Governing Bodies under Statute 100 of the Calcutta University First Statutes, 1966. Statute 100(1) reads as follows:

In the case of a college managed by any Trust or registered Society or under a scheme laid down by a competent Court, the constitution of the Governing Body shall, in so far as the terms and conditions of such Trust, Articles and Memorandum of Association of such registered Society, or such schemes, as the case may be so required as such provided that after the commencement; of these Statutes the terms and conditions of any such Trust, the Articles and Memorandum of Association of any such Society or any such scheme shall require the approval of the Syndicate before such Trust is created, Such Society is registered or such scheme is submitted to the Court.

The Brahmo Samaj Education Society was registered in 1905 under the Societies Registration Act. The Trust Deed was created by Ananda Mohan Bose and Umesh Chandra Dutta only with respect to the property at No. 13 Mirzapur Street, Calcutta, where the City College was originally situated. In the Trust Deed there is a clause that the premises would be used, occupied and enjoyed for the purpose of the said City College and for such other purposes subject to such conditions as the Council of the college with the sanction of the Trustees may decide.

16. It appears that the trust property was mortgaged by the Trustees for the purpose of raising funds for reconstruction of the building, City College was started in 1881. Both, the school and the college were started at No. 13 Mirzapur Street. The said college and the school with all properties were made over to the Sadharan Brahmo Samaj in 1904. The Sadharan Brahmo Samaj handed over the college and the school to an institution called the. "City College Institution"

which was registered under the Societies Registration Act on January 27, 1905. Subsequently, the name of the registered society was changed to the Brahmo Samaj Education Society. It further appears that the trust properties which were covered by the mortgage of late Ananda Mohan Bose and Umesh Chandra Dutta were delivered to the City College Institution. It has been specifically made known to the University at the time of asking for recognition under Statute 100 of the Statutes that the colleges were not managed by any trust deed, but they were managed under a society registered under the Societies Registration Act. A copy of the Deed of Conveyance was produced before me wherefrom it appears that the land at No. 102/1 Raja Ram Mohan Sarani was purchased by the Society. It is not also disputed that the composition of the Governing Bodies are according to the constitution of the Education Society and such constitution of the Governing Bodies have also been approved by the Calcutta University previously. It has been held in Khagen Sen's case (Supra) that Statute 100 confers a right upon the Governing Body of a college to have a Governing Body of that college in accordance with the terms and conditions of the Memorandum of Association of a registered society. So, that right can only be taken away by the University by exercising valid powers under the law. Voluntary Surrendering the powers of the Governing Body to the University and dissolving a Governing Body by the University for the purpose of reconstitution under Statute 93 are not the same thing. The society previously made repeated requests to the University for taking over of the management of the three colleges, but the University did not accede to their requests. Past conduct and financial stringency of the members of the Governing Body of the college could not be of any relevant consideration for reconstitution under Statute 93.

17. Now, in the instant case, it is argued that the power of supersession has been exercised by the University u/s 4(11) read with Section 23(2) of the Act.

18. In Khagen Sen's case (Supra) that power was found validly exercised by the University where the Ashutosh College could not produce any Trust Deed or Articles of Association to show that the Governing Body of the college was constituted in terms of a Trust Deed or Memorandum and Articles of Association. The present case is different.

19. In the reports submitted by the Enquiry Committee on the basis of which the University and the Syndicate passed the impugned resolutions, there was numerous references of mismanagement and financial irregularities made by the Governing Bodies of the three colleges. But the members of the Enquiry Committee recommended the supersession of the Governing Bodies of the colleges specifically on the ground that the Managing Committees failed to produce any Trust Deed so as to claim the benefit as provided under Statute 100 and for the purpose of reconstitution of the Governing Bodies of the three colleges under Statute 93. The Committee also recommended to appoint an ad hoc committee. The University accepted such recommendations and for the purpose of reconstitution of the Governing Bodies of the three colleges under

Statute 93 superseded the Governing Bodies of the three colleges. It is true that the powers u/s 4(11) read with Section 23(2) of the Act are wider and to exercise such powers no conditions precedent have been laid down in the Act. To meet the exigencies of any particular situation, in my opinion, that power could be exercised. It has been held by the Division Bench of this Court in Khagen Sen's case (Supra) that the powers conferred on the Syndicate u/s 23(3) are not coextensive with those provided under Clause (11) of Section 4. Though the powers u/s 23(3) are included in Clause (11) of Section 4 which is much wider in its scope. But, where specific powers have been provided in the Statute to dissolve the Governing Body of a college where as a result of enquiries if it is found that the affairs of the institution are being mismanaged to the detriment of the institution as an effective educational institution, without taking recourse to that power as provided in the Statute, can the University exercise the residual power to supersede the Governing Body of the institution which enjoyed the rights under Statute 100 for the purpose of reconstitution under Statute 93? Mr. Dey, on behalf of the University, contended that the report of the Enquiry Committee did not include only the absence of a valid Trust Deed, but numerous instances of mismanagement to the detriment of the institution have also been referred to and the University and the Syndicate in its meeting considered the report in its entirety and thereupon passed a resolution dissolving the Managing Committee. According to Mr. Dey, not only the absence of the Trust Deed but also the financial conditions, lack of educational facilities, the unhealthy atmosphere, the aroma of bankruptcy, the strained relationship between the Principal and the Governing Body, all these things together were taken into account and considering all these aspects the University passed the resolution.

20. In K.N. Sen's case (Supra) referred to hereinabove, the learned Judges of the Division Bench held that where there was no Governing Body in terms of Articles and Memorandum of Association of a registered society, the University was entitled to take action under Clause (11) of Section 4 dissolving the Governing Body inasmuch as that power was not provided in Sub-section (1) or Sub-section (3) of Section 23 as existence of a validly constituted Governing Body is contemplated. In my opinion, the University and the Syndicate in exercising powers under Clause (11) of Section 4 read with Section 23(2) of the Calcutta University Act, 1966, have got no power to supersede a Governing Body validly constituted according to the terms and conditions of a registered society, for the purpose of reconstitution of the Governing Body under Statute 93. If there were allegations of mismanagement or maladministration, it could have taken recourse u/s 23(3) of the Act, but in that case it must follow the procedure as laid down in Ordinance 64 of the Calcutta University First Ordinances.

21. In the result, these Rules are made absolute. The impugned resolutions dated January 16, 1975, are quashed by a writ of certiorari.

22. Let a writ of mandamus be issued commanding the Respondents not to give effect to such resolutions.

23. This order shall not, however, prevent the University to take, such appropriate proceedings against the Governing Bodies of these colleges on the basis of the other materials in the existing report of the Enquiry Committee as it may be advised.

24. There will be no order for costs.

25. Let the operation of the order be stayed, as prayed for, till a fortnight after the Easter vacation. The interim order already granted shall continue upto that period. As regards salaries of all the employees as also all other essential payments of the three colleges shall be paid and borne by the Petitioners. All such payments shall, be made by cheques.