
(1990) 08 CAL CK 0047
In the Calcutta High Court
Case No : C.O. 2962 (W) of 1988

Sk. Hatem Ali and others

APPELLANT

Vs

West Bengal Board of Secondary Education and others

RESPONDENT

Date of Decision : 20-08-1990

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Board of Secondary Education Act, 1963 — Section 19A

Citation : AIR 1991 Cal 321

Hon'ble Judges : Paritosh K. Mukherjee, J

Bench : Single Bench

Advocate : Kashi Kanta Moitra, Pramatha Nath Palit and Anjan Chakraborty, for the Appellant; S.C. Ukil, Govt. Pleader and Mrs. Chhabi Das, Arun Prakash Sarkar, Amal Kumar Basu Chaudhuri and Mrs. Banani Mukherjee for State and Suprakash Banerj, for West Bengal of Secondary Education, for the Respondent

Judgement

1. This writ petition was moved on behalf of Sk. Hatem Ali and 14 others, claiming themselves to be the Guardians of their respective Wards, residing in the village Rajibpur, P.O. Achipore, District 24-Par-ganas (South), challenging a communication sent by the Secretary of the West Bengal Board of Secondary Education dated February, 22, 1988, intimating that the Executive Committee of the Board in its meeting dated February 15, 1988, had accorded sanction for shifting the site of the existing school, namely, Rajibpur Junior High School on Plot No. 240, Khatian No. 43, J.L. No. 43, Mouza Rajibpur.

2. Earlier on the writ petition filed by Sk. Mohammad Ali and others Civil Rule No. 1012(W) of 1985 was issued by this Court which was disposed of by me by a reasoned judgment dated November 23, 1987, in the presence of Mr. Pramatha Nath Palit, learned Advocate for the petitioners and Mr. S. C. Ukil, Government Pleader, with Miss. Chhabi Das, learned Advocate for the private respondents Nos. 4 to 7 and Mr. Pabitra Kumar Basu, learned Advocate for the State, on certain terms, inter alia, as follows:

3. This Court recorded the submissions of Mr. Ukil that since there was a representation filed on behalf of his clients, namely, the private respondents Nos. 4 to 7, before the West Bengal Board of Secondary Education for changing the present site of the School which has not yet been disposed of it would be just and proper for this Court to direct disposal of the said representation in accordance with law. Mr. Ukil further submitted that all the teaching staff were and are willing to opt service in the changed site and as such there should not be any impediment for changing the site, as it was pointed out in the affidavit in opposition filed on behalf of the private respondents Nos. 4 to 7 in the said writ petition.

4. Accordingly, having heard all the parties, I directed the West Bengal Board of Secondary Education to dispose of the said representation of the private respondents Nos. 4 to 7 in accordance with law, and the Board of Secondary Education was directed to give personal hearing to the writ petitioners before taking any decision with regard to the changing the existing site of the School and the writ petition was disposed of accordingly.

5. Mr. Pramatha Nath Palit, learned Advocate led by Mr. Kashi Kanta Moitra, learned Advocate, at the final hearing of the writ petition submits before this Court that in disposing of the representation the West Bengal Board of Secondary Education had not acted in accordance with the relevant provisions for granting recognition of the School in particular, S. 19A of the West Bengal Secondary Education Act, 1963 and in particular the provisions of S. 19A(d)(i)(iii) relating to shifting from the existing site to another side, which runs as follows:--

19A(d). (Subject to any directions) of the State Government in regard to the number, location and manner, of selection-

(i) grant or refuse recognition to Institutions, after considering the recommendation of the Recognition Committee;

(d)(i) amalgamate two or more Institutions into one Institution,

(ii) split one Institution into two or more institutions, and

(iii) Shift an Institution from one site to another;"

6. Mr. Suprakash Banerjee, learned Advocate led by Mr. Arun Prakash Sarkar, Learned Advocate, appearing on behalf of the Board has annexed the resolution of Executive Committee dated February 15, 1988, in vernacular, adopted by the Executive Committee of the West Bengal Board of Secondary Education in the presence of Rakhal Dasgupta, Sudin Chattopadhyaya, and Ranju Gopal Mukherjee, who had put their signatures, which is Annexure "X" to the affidavit in opposition filed on behalf of the West Bengal Board of Secondary Education.

7. It appears from the said resolution that the Executive Committee had arrived : the relevant conclusion (a) Sk. Mohammad Ali (the main petitioner) did not appear on the fixed date but one Isa Haque, another petitioner appeared and

asserted that Sri Ali had initially started the School being Rajibpu Junior High School and donated the land for the School and their grievance was that without the decision of the Managing Committee and without any resolution, the concerned District Inspector of Schools (S.E.), 24-Parganas (South) by physical force wanted to shift the existing site with effect from January 24, 1985, at the new place which has been challenged in the earlier writ petition and disposed of by me stated as aforesaid.

8. (b) There was already a move which would be evident from the necessary papers that the Managing Committee of the School, having regard to the increased number of students and attending circumstances and atmosphere not being congenial at the existing site, as far back from 1968 there was an attempt to shift the site of the School and the Managing Committee of the School had already taken a decision as far back on May 26, 1968 by unanimous resolution for shifting the site of the School to the new place donated by Sri Jibar Krishna Kanrar at Rajibpur village adjacent to Achipur Post Office over 50 decimals of land.

9. (c) There was already a decision of the Managing Committee on November 14, 1984 that the School should be allowed to be started on the land donated by Sri Kanrar and with the help of public donation in which Sri Ali was present.

10. (d) There was already public meeting held in the locality on December 16, 1985 and proposal for shifting the site has been duly endorsed in the said public meeting, but Sri Ali challenged the said decision to shift the existing site before the Calcutta High Court by filing a writ petition on February 1, 1985 which has been disposed of by me as indicated hereinabove.

11. (e) In the result, the Executive Committee of the Board has arrived at the conclusion that since there is a specific resolution of the Managing Committee and recommendation of the public meeting but there was procedural lapses as the decision to shift has been taken by the District Inspector of Schools (S.E.) 24-Parganas (South) which has been deprecated by this Hon''ble Court, by giving liberty to the West Bengal Board of Secondary Education to take proper decision and accordingly, the Executive Committee of the Board had taken the relevant decision on February 22, 1988 by ratifying the earlier decision to changing the site of the School.

12. Mr. Suprakash Banerjee, learned Advocate appearing for the West Bengal Board of Secondary Education has placed Strong reliance on the Circular Bearing No. 553-Edn(S) dated Calcutta, the 26th April, 1978, on the subject of recognition of Secondary Schools in West Bengal with effect from January 1, 1978, and he has submitted before this Court that the said circular has been followed truly by the Board in approving the decision to change the site by the Managing Committee as indicated hereinbefore.

13. Mr. Palit, in reply, however, submitted before this Court that the Executive Committee decision consisting of three members cannot be regarded as the

decision of the Board and as such, this Court is entitled to set aside the decision of the three-member Committee.

14. I have considered the submissions of Mr. Palit and the learned Government Pleader on behalf of the private respondents and Mr. Suprakash Banerjee, learned Advocate for the West Bengal Board of Secondary Education and Mr. Amal Kurnar Basu Chaudhuri, learned Advocate "for the State, and I am of the view, firstly, since the decision taken by the Executive Committee of the Board consisting of its former President Ranju Gopal Mukherjee, at the relevant period, the present writ petitioners should not and cannot have any grievance according to law.

15. Secondly, in my view, the present petitioners not being the original writ petitioners and the original writ petitioners having been transposed as the private respondents being represented by Mr. S.C. Ukil, learned Government Pleader, this Court has every doubt as to whether the present petitioners being the Guardians of their respective wards have any locus standi to maintain the writ petition to challenge the decision of the Executive Committee of the West Bengal Board of Secondary Education. But since earlier writ petitioners were already moved by some of the Guardians, when this Court has taken a contrary view as this Court had already entertained such petitions on behalf of some of the Guardians of the wards of the said School and as such, this Court is not inclined to dismiss the writ petition on that ground only.

In the result, I am of the view that the decision of the statutory body, namely, the Executive Committee of the West Bengal Board of Secondary Education which has been taken in accordance with the directions passed by this Court and contained with reasons may not be substituted by this Court sitting in this Constitutional Writ Jurisdiction, as I am afraid that this is not the business of this Court to sit over judgment over the statutory authority.

16. Accordingly, the writ petition is entitled to fail, but before parting, this Court also expects that if there is any representation made on behalf of the present writ petitioners either before the Director of School Education, West Bengal or before the Executive Committee of the West Bengal Board of Secondary Education, the said representation should be considered after making suitable inspection by the Board through the officials of the Education Directorate and consider the question of granting of recognition, if there are sufficient number of students and amenities and assurance given to the present petitioners being the Guardians, and in accordance with law.

17. Such representation will have to be made within one month from this date and the West Bengal Board of Secondary Education is directed to consider such representation within three months from receipt of such representation, and in accordance with law

The writ petition is dismissed was the aforesaid observations.

There will be no order as to costs.

If xerox copy of this order is applied for, the same be given to the parties on the usual undertaking as per present practice of this Court.

18. Petition dismissed.