

(2019) 04 CAL CK 0003

In the Calcutta High Court

Case No : Writ Petitions (WP)1683, 1686, 1689, 1691, 1694, 1697, 1703, 1705, 1706, 2806 (W) Of 2019

Soumendra Nath Pande

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Management Of Sponsored Institutions (Secondary) Rules, 1972 — Rule 4, 4(viii), 5, 5(ii), 5(iii), 5(iv), 5(v), 25
Management of Recognized Non Govt Institutions Rules, 1969 — Rule 6, 7

Citation : (2019) 04 CAL CK 0003

Hon'ble Judges : Moushumi Bhattacharya J

Bench : Single Bench

Advocate : Kamalesh Bhattacharya, UsOf Ali Dewan, Asif Dewan, Tapan Kumar Mukherjee, Ranjan Saha, Chaitali Bhattacharya, Susmita Chatterjee, Pinaki Bhattacharya, Supriyo Chattopadhyay, Susanta Pal, Sajal Pandit, Sanghamitra Nandy, Bhaskar Chakraborty, Subrata Ghosh, Arun Kumar Saha, Saugata Mitra, Bhaskar Prasad Vaisya, Suman De

Final Decision : Disposed Off

Judgement

The writ petitioners were appointed as Presidents of the Committees of their respective schools by an order of the Joint Secretary to the Government of West Bengal dated 21st December, 2018. By the said order, the concerned authority found it necessary to constitute the Managing Committee of the schools in terms of Rule 5 of the Rules for Managing of Sponsored Institutions (Secondary), 1972. The petitioners were appointed as the nominees of the department of School Education and such nominations were stated to be liable for cancellation in the event of failure to comply with the order as stated in the order passed by the Joint Secretary on 21st December, 2018. The immediate cause of the petitioners for filing the present writ petitions is an order dated 14th January, 2019 passed by the Principal Secretary to the Government of West Bengal (similar orders were passed in all the writ petitions) in exercise of the powers conferred under Rule 25

of the Rules for Management of Sponsored Institutions (Secondary) 1972, the Assistant Inspector of Schools was appointed as the Administrator of schools. The impugned orders were passed based on information received that the Managing Committee of ten (10) schools in Murshidabad district "have not been functioning properly and effectively" and that "a situation has developed in the schools in which the normal and smooth running of the institution is being badly hampered".

Learned counsel appearing for the petitioners relies on the order dated 21st December, 2018 nominating the petitioners as Presidents of the Managing Committees of the concerned schools and places emphasis on the part where it has been stated that the Head of the Institution is directed to take steps so that the newly constituted committees may take over and assume charge from the existing committees within fifteen (15) days from the date of receipt of the order. Learned Counsel submits that the 15 days contemplated under the order would start from 4th January, 2019 when the said order was received by the petitioners. It is submitted that soon after being nominated as Presidents of the concerned committees, the petitioners took steps on 4th January, 2019 and 9th January, 2019 to comply with Rules 4 and 5 of 1972 Rules. Learned Counsel submits that even before 19th January, 2019 (the end of the 15 days) the impugned order was passed on 14th January, 2019 appointing the Assistant Inspector of schools as the Administrator and superseding the existing managing committees of the schools with immediate effect.

Learned counsel appearing for the State, relies on a communication dated 31st December, 2018 from the District Inspector of Schools, Murshidabad, which states inter alia that ten (10) Government sponsored schools under Farakka Block " are not functioning properly" and hence appropriate action may be initiated under the 1972 Rules. The school in which the writ petitioners were appointed Presidents are listed in the said communication. Counsel submits that this communication would show the reason for passing the impugned order dated 14th January, 2019 and that such order was also necessary due to the non-functioning of the Managing Committees in the concerned schools. It is further submitted that since there can be no administrative vacuum the Managing Committees had to be superseded and administrators appointed in the said schools.

Having heard the learned counsel appearing for the parties, Rules 4 and 5 of the 1972 Rules are required to be set out hereinbelow.

" 4. Committee - Every Sponsored Institution shall have a Committee to be constituted in the manner and for the purposes hereinafter appearing.

5. Composition of the Committee - The committee shall consist of the following members: -

(i) a President to be appointed by the Department of School Education of the State Government:

(ii) two representatives of the Body/ Organisation/Society aiding or co-operating with the State Government in setting up the Institution:-

(iii) one Government official to be nominated by the Director of School Education West Bengal:-

(iv) two persons interested in education to be nominated by the Director of School Education, West Bengal:-

(v) one medical practitioner to be nominated by the Director of School Education, West Bengal :-

(vi) the Head of the Institution concerned:-

(vii) three representatives of the teachers of the Institution to be elected in the manner prescribed in rule 6 :-

(viii) two representatives of guardian of whom one shall be a women in the case of a girls' school, to be nominated by the President in the manner prescribed in rule 7:-

(ix) One representative of the whole-time non-teaching staff of the Institution to be elected in the same manner and according to the same procedure as laid down in the management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969.

Provided that the State Government shall have the power to approve of a special constitution of a committee in respect of schools sponsored by Trusts or religious or linguistic minority."

The above Rules show that the committee of a sponsored institution shall be constituted and have the composition as mandated under Rule 5. The composition shows that besides a President who is to be appointed by the Department of School Education (already done in this case by the order dated 21st December, 2018), the State Government as well as the Director of School Education are under an obligation to appoint that four persons being two representatives of the organization, one Government Official, two persons interested in education, one medical practitioner (Rule 5 (ii),(iii),(iv) and (v). The documents annexed to the writ petitions indicate that the petitioners took steps to appoint guardian representatives under Rule 4(viii) which is evident from communication dated 4th January, 2019 and 9th January, 2019. The resolutions adopted by the committee on 4th January, 2019 and 9th January, 2019 shows that committee had held at least two meetings to give effect to the order dated 21st December, 2018. The other relevant factor is that the communication relied on by learned Counsel for the State dated 31st December, 2018, alleging non-functioning of the 10 (Ten) Government sponsored schools, is a document 10 (ten) days' after the order dated 21st December, 2018 by which the petitioners were nominated as Presidents of the Committees of their concerned schools. It is inconceivable therefore, that the District Inspector of Schools within 10 (ten)

days of nominating the petitioners, found the schools to be improperly functioning and hence warranting immediate action. Significantly, the order nominating the petitioners as Presidents was received by the petitioners on 4th January, 2019. Third, when the orders specifically contemplates the newly constituted committees to assume charge within 15 days from the date of receipt of the order dated 21st December, 2018, the earliest date on which any action could have been taken against the petitioners or the Managing Committees of the concerned schools was on 20th January, 2019 and not before. Most important, there is no document to show that the Department of School Education or the Director of School Education had taken any steps in compliance with Rule 5(iii)(iv)(v) by which the department of School Education and the Director of School Education were supposed to nominate various persons for completing the composition of the committee. This Court therefore fails to see how committees which had not yet been fully formed as required under Rule 5 of the 1972 Rules (by appointments made by the department and the Director of School Education) could have been found to be not functioning properly as stated in the impugned order dated 14th January, 2019. If this be the case, the appointment of the Assistant Inspectors as administrators and supersession of the existing managing committees of the concerned schools, cannot also be sustained and should be cancelled and/or set aside.

In view of the above discussion, the impugned order dated 14th January, 2019 passed by the Principle Secretary to the Government of West Bengal is set aside and the concerned respondents being the respondent nos. 2 and 3 are directed to maintain the state of affairs as was existing on 4th January, 2019 or whichever date the writ petitioners herein assumed office as nominated Presidents of the Managing Committees of their concerned schools. Since this Court is in agreement with the view of learned Counsel appearing for the State that the schools cannot function without properly constituted managing committees, the concerned authorities are at liberty to take steps in compliance with Rule 5 of the 1972 Rules in the most effective and expeditious way possible in the present circumstances.

In view of the above, all the writ petitions are disposed of in terms of the above direction.