
(1996) 01 CAL CK 0004
In the Calcutta High Court
Case No : F.M.A.T. No. 3706 of 1993

Swapan Kumar Nanda and Others

APPELLANT

Vs

Dilip Kumar Sikdar and Others

RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 1 CALLT 360

Hon'ble Judges : Satyabrata Sinha, J; Satya Narayan Chakrabarty, J

Bench : Division Bench

Advocate : Sundarnanda Pal and Tapan Kumar MukherjeeIII, for the Appellant; A.P. Sircar, Tridib Kumar Sarkar and Milan Bhattacharjee, Alope Biswas and Rekha Sarkar, Arunava Ghosh, for the Respondent

Judgement

Satyabrata Sinha, J.—This appeal is directed against an order dated 14. 10.93 passed by this Court in C.O. No. 12562 (W) of 1993 in terms whereof another writ application being CO. No. 12563 (W) of 1993 was also directed to be governed.

2. The fact of the matter is complicated but we do not intend to deal with the factual matrix of the case in the details. In view of the order proposed to be passed by us suffice it to say that one Dr. Dulal Bag was appointed as Administrator of Balurghat High school on or about 19. 1. 89. Some of the guardians who became the members of the Managing Committee of the school questioned the order dated 12. 12. 88 as well as the order extending the terms of the said Administrator and by an order dated 19.1. 89 an interim order was granted in terms of prayer (d) and (e) for a limited period which was extended by an order dated 14. 2. 89. An interview was purported to have been held by the said Administrator for the appointment of the Headmaster and a panel was prepared consisting the names of (1) Dilip Kumar Sikdar, (2) Nalinaksha Basak and (3) Soumendra Nath Mondal. An application for contempt was filed wherein allegedly an unqualified apology was made on behalf of the Administrator for not

giving proper attention to the order passed by this Court. It is alleged that the Managing Committee of the School has been reconstituted on or about 25.11.90. It appears that despite the same the aforementioned Dilip Kumar Sikdar whose name appeared at serial No. 1 in the panel was not allowed to function and he filed a writ petition. In the said writ application an interim order was passed directing the Director of School Education to consider the matter. By order dated 29. 11. 90 the Director of School rejected the panel prepared by the Administrator Dr. Dulal Bag. A writ application was moved by the aforementioned Dilip Kumar Sikdar which is still pending. It is stated at the Bar that an interim order had been passed in the said writ application staying further implementation of the said order. In the writ application being CO. No. 13913(W) of 1990 an application has been filed for vacating the said interim order by the members of the Managing Committee of the School. It appears that another writ application has been filed by one Nalinaksha Basak and Soumendra Nath Mondal for grant of approval of the panel prepared by the Administrator of the School for appointment of Headmaster. The aforementioned writ application is also still pending. An interim order was passed by a learned Single Judge of this Court on or about 16th September, 1992 directing the District Inspector of Schools (S.E.) to grant approval of the panel and the Managing Committee was directed to issue appointment letter according to the panel to be approved by the D.I. of Schools (S.E.). An appeal was preferred as against the said order which was registered as F.M.A.T. No. 3229 of 1992. However it appears that in the meanwhile by a judgment and order dated 24.6.93 passed in F.M.A.T. No. 3329 of 1992 with F.M.A.T. No. 3229 of 1992 (Swapan Kumar Nanda v. State of West Bengal and Ors.) which arose out of an interim order dated 16th September, 1992. A Division Bench of this Court comprising of Prabir Kumar Majumder and Samarendra Banerjee, JJ while allowing the appeal directed the Trial Court to dispose of the matter in accordance with law and further granted liberty to the parties to apply for further direction before the Trial Court. No application for further direction was filed but a separate writ application was filed. Allegedly the aforementioned Dilip Kumar Sikdar was appointed as Headmaster by one Shekhar Dasgupta who claimed himself to be the sole authority of the Managing Committee purported to be on the basis of the order dated 16th September, 1992 which was set aside by the Division Bench of this Court. According to the appellant, having failed to obtain appointment as Headmaster Sri D.K. Sikdar set up the petitioner to file the present writ application which was registered as CO. No. 12562(W) of 1993. Another writ application being CO. No. 12563(W) of 1993 was filed by the present appellant against the order of appointment of Drawing and Disbursing Officer.

3. Both the aforementioned writ applications as noticed hereinbefore were disposed of by the learned Trial Judge in the manner as stated in the order.

4. Mr. Pal, learned Counsel appearing on behalf of the appellant, inter alia, has submitted that the impugned order is in direct violation of the order passed by the Division Bench dated 24.6.93 comprising of P.K. Majumder and Samarendra

Banerjea, JJ in the aforementioned F.M.A.T. No. 3329 of 1992 read with F.M.A.T. No. 3229 of 1992. He further submits from a reading of the prayer of the writ application it appears that therein also a prayer had been made for issuance of a writ of Mandamus directing the respondents to allow the petitioner to work as Headmaster although neither he was a candidate for the post of Headmaster nor there was any occasion for making such prayer. The learned Counsel submits that from the said prayer it would be evident that the petitioners were set up by Dilip Kumar Sikdar which is also apparent from the statement made in the writ application filed by Sri Sankar Prosad Ghosh and others. Our attention was further drawn to the affidavit filed by Sankar Prosad Ghosh; paragraph 3 whereof reads thus:-

"I say that I have never instructed Mr. Naresh Chandra Roy, Learned Advocate or Mr. Debatosh Khan, Learned Advocate of the Hon'ble Court to file the writ petition which has been purportedly moved on 24th September, 1993 before the Hon'ble Justice Dilip Kumar Basu and to that effect I have never informed the Joint Secretary of Balurghat High School by letter dated 25th September, 1993".

5. Mr. Sarkar, learned Counsel appearing on behalf of the Headmaster, inter alia, contended that by an order dated 22.12.93 passed in F.M.A.T. No. 3706 of 1993 (Swapan Kumar Nanda v. Dilip Kumar Sikdar) the Division Bench of this Court comprising of B.P. Banerjee and N.K. Bhattacharjee, JJ while considering the appeal, inter alia, directed that as an interim measure the Headmaster Sri D.K. Sikdar shall take over the charge and shall act as Headmaster until further order. The learned Counsel states that the said order has been affirmed by the Supreme Court of India.

6. Having regard to the fact that the two writ applications filed by D.K. Sikdar are still pending, in our opinion, the learned Trial Judge could not have passed the impugned order directing the Teacher-in-Charge to hand over the charge of Headmaster to Sri Dilip Kumar Sikdar. We are however of the view that in that of the matter the question of appointing Sri Tamal Banerjee as Administrator of the school did not arise.

7. It is not disputed that the panel wherein the name of Nalinaksha Basak appeared has not been approved by the Director of School Education. The said order was passed pursuant to an interim order passed by this Court. The writ petition questioning the aforementioned order of the Director of School Education is still pending decision in this Court. In fact both the writ applications filed by Dilip Kumar Sikdar are still pending. Unless and until the order passed by the Director of School Education is set aside the question of appointing D.K. Sikdar as a permanent Headmaster of the School in question does not arise.

8. The history of the case shows that various parties are at loggerheads and filed different writ applications and are trying to obtain interim order at different stages. It also appears that the learned Trial Judge has failed to take notice of the fact that according to the writ petitioner No. 1 himself, he did not file the

same. In this view of the matter we are unable to sustain the impugned judgment and order passed by the learned Trial Judge. An application has been filed for removal of the Administrator. We do not intend to go into the allegations and counter-allegations made before us as regards the acts of commission and omission on the part of the said Administrator, inasmuch as, we are of the opinion that he could not have been appointed at the instance of the writ petitioner/respondent.

9. The question which now arises for consideration is as to what order should be passed by this Court. Admittedly various writ applications are pending consideration. By reason of an interim order passed by this Court Sri Dilip Kumar Sikdar has been acting as Headmaster by way of interim measure. If the said order is recalled at this stage, another round of litigation may be started.

10. In this view of the matter, we dispose of the appeal with the following directions:

(1) The impugned judgment and order dated 14.10.93 is set aside and the appeal is allowed.

(2) All the writ applications filed by different parties should be heard analogously and if the appeals are pending before different Benches of this Court, parties will be at liberty to move the Hon'ble the Acting Chief Justice for assignment of the matter before one Bench. This order is being passed so that all the controversies relating to the affairs of the school including the appointment of Headmaster are resolved once for all.

(3) Keeping in view the fact that various parties are concerned as regards management of the school, the District Inspector of Schools (S.E.) Dakshin Dinajpur, shall act as an Administrator. He shall, however, not get any remuneration whatsoever.

(4) We would request the learned Trial Judge to dispose of the writ application at an early date and preferably within a period of two weeks from the date of communication of this order. All the writ application may be listed under the heading "Specially Fixed Matters" and we are sure that the learned Counsel for the parties shall not pray for any adjournment in the matter.

(5) We make it clear that we have not passed any order of removal of Sri Tamal Banerjee in view of the allegations made against him. It would be open to the parties to make an application for further order before the learned Trial Judge in this regard or before any other forum.

(6) If the remuneration and other expenses incurred by the Administrator is due, the same should be paid.

(7) This interim arrangement shall be without prejudice to the rights and contentions of the parties and pursuant thereto Sri Dilip Kumar Sikdar shall not claim any equity whatsoever.

11. The appeal and the application are disposed of with the aforementioned observations.

12. Let a plain copy of the operative part of this judgment countersigned by the Assistant Registrar (Court) be handed over to the learned Counsel for the parties on usual undertaking.

Appeal disposed of with observations

S.N. Chakrabarty, J.

13. I agree.