
(1974) 08 CAL CK 0006
In the Calcutta High Court
Case No : F.M.A. No's. 445 and 668 of 1973

University of Calcutta

APPELLANT

Vs

Gosta Behari Ghosh

RESPONDENT

Date of Decision : 05-08-1974

Acts Referred:

Calcutta University Act, 1966 — Section 4(11), 4(8)
Constitution of India, 1950 — Article 226, 226(1)

Citation : (1976) 1 ILR (Cal) 185

Hon'ble Judges : Salil K. Datta, J;B.C. Roy, J

Bench : Division Bench

Advocate : Mohan Mallick, for the Appellant;Noni Coomar Chakraborty, Saktinath Mukherjee, Bidyut Kumar Banerjee, S. Dutta and Tarak Nath Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Salil K. Datta, J.—This unfortunate litigation concerns the disputes over the constitution of the Governing Body of a college and is directed against the judgment and order of A.K. Sen J. dated March 5, 1973, whereby C.R. No. 4172(W) of 1971 was made absolute with certain directions. Before we proceed to enter into the facts of the case, it will be necessary to take into consideration the provisions of the relevant Act and statutes framed thereunder.

2. By the Calcutta University Act, 1966, which came into force on September 18, 1966, the University of Calcutta was reconstituted and under the provisions thereunder the First Statutes of the University were framed by its Vice-Chancellor. The said Statutes came into force on the same day on September 18, 1966 and chap. VII contains provisions regarding the Governing Body of colleges. Clause (1) of Statute 93 provides for the constitution of the Governing Body and lays down that (a) the Principal of the college shall be the ex officio Secretary of the Governing Body, (b) two members are to be elected from amongst the whole-time teachers of the college, (c) for a college receiving financial aid from the

State Government, one member to be nominated by the State Government, (d) three members to be nominated by the Syndicate, (e) members to be included in the Governing Body under terms of any donation to the college and other members as representatives of donors of the college to whose donation no such condition is attached; Clause (2) provides that the members of the Governing Body shall at their first meeting elect a person as its President who may not be one of such members; under Clause (3) the Principal, of the college shall report the names of the persons of the Governing Body to the University; Clause (4) provides that all disputes about the election and nomination of the members or the President of the Governing Body shall be referred to the Syndicate and its decision thereon shall be final. Statute 94(1) of the First Statutes provides that the tenure of office of elected representatives of teachers shall be two years and of other elected and nominated members shall be four years from the date of election of the President, but an elected or a nominated member of the Governing Body shall, on the expiration of his term of office, continue to serve as such member until his successor takes charge or until the Syndicate otherwise directs.

3. We have recited in brief the relevant provisions of the Statutes which will be necessary for our purpose in this appeal. We shall now state the facts as appearing from records. By a deed of settlement dated May 17, 1965, the Petitioners Nos. 1 and 2 in the rule conveyed a piece of land at Madral P.S. Jagatdal, 24-Parganas, with two-storeyed buildings thereon to the Petitioners Nos. 3 to 5 and the Respondents Nos. 5 and 9 in the rule as members of the provisional committee for the establishment of a B. T. College in the name of their predecessor, late Nandalal Ghosh. The provisional Governing Body applied to the University for the affiliation as a B.T. College and the Syndicate by its resolution dated July 5, 1968, accepted the report of the Inspectors of Colleges of the University deputed for the purpose and granted affiliation to the College on conditions that teachers were to be appointed and approved by the University and the college building was to be completed within two years. The College started functioning from August 1968.

4. On October 31, 1968, the University issued a circular to all heads of affiliated colleges including the college of the Petitioners asking them to reconstitute their respective Governing Bodies in accordance with the First Statutes and report the same to the University within December 31, 1968. The Petitioner No. 4, as Secretary of the provisional Governing Body, informed the University on December 11, 1968, that the deed of May 17, 1965, had been substantially amended by another deed dated September 5, 1968, registered on December 31, 1968, whereby, a Trust Board was created to administer the College. The University by its letter of May 25, 1969, refused to accept the deed as it was registered after the enforcement of the First Statutes without its prior approval and it was directed that the Governing Body of the College should be reconstituted in accordance with Statute 93 without further delay.

5. According to the Petitioner, the provisional Governing Body had no knowledge of this direction as the same was withheld by the Respondent No. 5. This Respondent was originally one of the trustees but was appointed a temporary Principal of the College. The University by its letter of May 23, 1969, informed the President of the College that the appointment was not approved and that he should take steps to appoint a properly qualified wholetime Principal of the College on substantive basis as provided in the First Reg. (19) framed under the Act. The Respondent No. 5, ignoring the said letter and apprehensive that he might not be appointed the Principal on substantive basis, with the aid of the Respondent No. 10, reconstituted a Governing Body of the College with the Respondents Nos. 6 and 7 as teachers' representatives, the Petitioner No. 2 as donors' representative,--all without knowledge of the provisional Governing Body and the Respondent No. 10 forwarded the said names as members of such Governing Body to the University. Thereupon, the Vice-Chancellor on May 13, 1969, nominated the Respondents Nos. 12, 13 and 14 as the University nominees to the Governing Body. The Respondent No. 5 as the Principal and Secretary, ex officio, called a meeting of the Governing Body of the College on May 25, 1969, at the office of the Principal, David Hare Training College, Calcutta, for election of a President of the newly constituted Governing Body. This reconstitution of the Governing Body was challenged by the Petitioner No. 2. In spite of the objection, the said Governing Body held its meeting on May 25, 1969, as aforesaid and elected the Respondent No. 10 as its President and the University without considering the objection approved the Governing Body on May 26, 1969.

6. The Petitioners moved this Court under Article 226(1) of the Constitution in C.R. case No. 1746(W) of 1969 contending that the amendment of the trust deed dated September 5, 1969, should have been accepted by the University and the Governing Body should be reconstituted under Statute 100 and not Statute 93 as was done. This rule was disposed of by A.K. Sen J. on August 6, 1971 : Gostha Behar Ghose Vs. University of Calcutta, of 1971 and the Petitioners claim for acceptance of the deed of September 5, 1969, was rejected. As to the objection about the reconstitution of the Governing Body, it was directed that such dispute should be decided in accordance with Statute 93(4) if a dispute was raised. Prior to the disposal of the rule, the Respondents Nos. 5 and 6 admittedly had resigned from the disputed College by letter dated July 1, 1971, written to the Administrators of the College appointed by the Court and the said resignation was duly accepted by them.

7. The Petitioners as also the Respondents Nos. 8, 9 and 11 formally raised a dispute about the election and nomination of members and the President of the Governing Body under Statute 93(4) before the Syndicate. In their representation various objections were raised, inter alia, about the Respondent No. 5 who was alleged to be the disapproved Principal as also about the teachers' representative, as it was alleged, that in fact no election was held for the purpose. The Petitioners also made a representation for a personal hearing.

Before the Syndicate, however, a synopsis of the representation and a short note of the Inspector thereon was circulated. The note of the Inspector was never disclosed to the Petitioners and the Syndicate passed the following resolution on November 5, 1971.

Record Vice-Chancellor's decision regarding recognised (old) Governing Body approved to carry on till Syndicate makes any other decision.

2. Refer the matter to College Committee.

8. According to the University, the Syndicate by the said resolution upheld the recognition of the reconstituted Governing Body made by the Vice-Chancellor on May 26, 1969, thereby rejecting the objections of the Petitioners and others. The College Committee at its meeting of November 23, 1971, resolved, inter alia,

Resolved:

1. That the Governing Body of the College as recognised by the Vice-Chancellor on 26.5.69 and confirmed by the Syndicate on 5.11.71 be directed to function.

This resolution of the College Committee was approved by the Syndicate on December 17, 1971.

9. The Petitioners felt aggrieved by the above resolutions as also by the resolution of the Syndicate dated November 30, 1971, whereby it was claimed that their objection had been disposed of. They, accordingly, moved this Court under Article 226(1) of the Constitution for appropriate writs commanding the Respondents Nos. 1 to 3 to adjudicate the dispute referred to under Statute 93(4) of the First Statutes and not to give effect or further effect to the resolution of the Syndicate dated November 5, 1971. On this application, this Court issued a rule being C.R. No. 4172(W) of 1971, on December 14, 1971 and there was also an interim injunction restraining the Respondents from giving effect to the impugned resolution and also from shifting the College from its present place at Madral.

10. The rule was contested by the Respondents who filed affidavits-in-opposition in two sets, one by the Respondents Nos. 1 to 3, being the University and its officers, while the other set by the Principal and the elected and nominated members of the Governing Body as alleged. The Respondent No. 15 supported the Petitioner by filing a separate affidavit. There was a supplementary affidavit on behalf of the University while the Petitioners also filed affidavits-in-reply to the said affidavits-in-opposition. It appears that by order of the learned Judge on February 14, 1972, Mr. Manindra Chandra Ghosh was appointed an Administrator of the College.

11. It may be mentioned here that the University wrote on December 7, 1971, to the Respondent No. 10 as President of the Nandalal Ghosh B.T. College to the effect that though the College stepped into the fourth year of its existence, no steps were taken for construction of the College building. As the physical facilities

available at Sriram Bidyapith, Madral, where the College was being housed was absolutely inadequate and unsuitable, the University disapproved the holding of the College there any longer. The University approved the proposal of the College authority to change the venue of the College to premises No. 196 Rishi Bankim Chandra Road, Naihati, for a period of two years on condition that the College management would complete construction of the College building in course of two years. The Respondent No. 4, thereafter, issued a notification in the Ananda Bazar Patrika on December 8, 1971, stating that in pursuance of the direction of the University, the College was removed to Naihati. While the part of the College was thus removed to Naihati, the interim injunction in the connected rule restrained the Respondents from removing the College from Madral. As a result, the College is functioning at present both at Naihati and Madral.

12. The question in controversy before the learned Judge was whether the dispute about the election and nomination of members of the Governing Body and its President had been lawfully and bona fide disposed of by the Syndicate as required under Statute 93(4). The learned Judge on a consideration of the respective contentions of the learned Advocate for the parties came to the following conclusion:

(a) The functions of the Syndicate in deciding a dispute of conflicting claims under Statute 93(4) are quasi-judicial functions.

(b) Though it is not obligatory for the Syndicate to give a personal hearing, it must give adequate opportunities to the parties to support their respective cases before the dispute was decided.

(c) The Syndicate must make a speaking order when it decides the dispute under Statute 93(4).

(d) There was no disposal of the dispute by the Syndicate in a bona fide manner and in accordance with law.

(e) Even if the Syndicate in deciding a dispute under Statute 93(4) acts as an administrative body, the power had not been exercised in a fair and bona fide manner.

The rule, accordingly, was made absolute and impugned resolutions of the Syndicate were set aside and the Respondents were directed not to give effect to the same.

13. As to consequential order, the learned Judge after anxious consideration of the attending circumstances was of the view that to direct the Syndicate to decide the dispute again would be only to prolong this state of affairs. As even the reconstituted Governing Body had practically run out its statutory tenure, taking into consideration all factors the Court directed that the Administrator already appointed would continue till the Governing Body was constituted, but he would run the College at Madral. It was also directed that Mr. Arun Prokash Sarkar, a learned Advocate of this Court, was being appointed the Special Officer

to reconstitute the Governing Body of the College according to Statute 93 and in accordance with law. There were other material directions regarding the election of the President and also the discharge of the Administrator and of the Special Officer after the Governing Body so constituted was given charge of the institution. The parties were directed to act according to the directions set out in the order as broadly indicated above.

14. Against this decision, the University, the Vice-Chancellor and the Inspector of Colleges preferred an appeal being F.M.A. No. 445 of 1973. The Respondents in the rule being Respondent No. 5, the erstwhile Principal, Respondents Nos. 6 and 7, the alleged elected members of the teaching staff, Respondent No. 10, the President of the 1 impugned Governing Body and Respondents Nos. 12 to 14, the nominated members of the University in the Governing Body, preferred another appeal being F.M.A. No. 668 of 1973.

15. The appellate Court by its order dated May 29, 1973, in C.R. No. 769(M) of 1973 in the connected appeal filed by the University and others, while directed expeditious hearing of the appeal, discharged Mr. M.C. Ghosh, Administrator of Naihati College and appointed Mr. N.C. Chakravorty, a Senior Advocate of this Court, Administrator for both the Colleges vested with all powers of the Governing Bodies of the respective Colleges under the Act and the Statutes. There were some other directions contained in the said order pending the disposal of the appeal.

16. At the hearing of the appeals heard analogously, Mr. D.K. De, learned Advocate for the Appellants, the University and its officers submitted that though it was competent for the Court in constitutional writ jurisdiction to quash the resolutions of the Syndicate as not being in accordance with law and to direct reconsideration of the dispute according to law, the Court had no jurisdiction to appoint a Special Officer to discharge functions in connection with the reconstitution of the Governing Body of the College which had no link with the reliefs prayed for in the rule. If the order had stopped with the issuance of the writs, it would not have been necessary for the University in public interest to file the appeal.

17. It was further submitted that the appointment of the Special Officer in effect will result in usurpation of the functions of the University which under the relevant Act and Statutes were entrusted to the University and its authorities. In course of argument, Mr. De further submitted that as in the appeal he confined his attack to the appointment of the Special Officer, he was not addressing us on the various findings in the judgment under appeal and the Appellants will be satisfied if instead of the Special Officer the University is given the authority to appoint an Administrator for reconstitution of the Governing Body of the College under powers provided in Section 4(11) of the Calcutta University Act, 1966, in the attending circumstances.

18. Mr. Sankardas Banerjee, learned Advocate appearing for the Appellants, in

the other appeal has contended with great force that High Court in writ proceedings has no jurisdiction to give directions of the nature sought to be given in the judgment under appeal. He has referred to the decisions in *Thakur Birendra Singh v. The State of Madhya Pradesh and others*, (1969) 3 SCC 489 in support of his contention. In that case, the High Court in an application under Article 226 of the Constitution quashed the orders of the Revenue Court directing at the same time that

the case is remitted to the Revenue authorities for a fresh decision with advertence to the observations made in the order after giving the parties an opportunity of being heard.

The Supreme Court in allowing the appeal observed as follows:

It appears that the High Court had gone wrong in giving these further directions. The High Court was not sitting in appeal over the decision of the Board of Revenue. The High Court should have quashed the orders without giving any further directions. Once the orders complained of are quashed, the matter should have been left at large without any further directions leaving the Revenue authorities free to take any steps allowable under the law. We, therefore, allow the appeal making it clear that the Revenue authorities will be entitled to take any steps for reviewing the earlier orders and making alterations in the records sanctioned by law. In doing so, they will not be bound by any expression of opinion of the High Court or the direction given by it.

19. Strongly relying on the above decision, Mr. Banerjee submitted that such directions given by the trial Court has no legal warrant and is beyond the competence of the Court not sitting in appeal but exercising writ jurisdiction.

20. It appears to us that the law laid down in the said decision has no application to the facts of the case before us. In the above case, the position was that the matter before the High Court was sent by it for fresh adjudication to the Revenue authorities. The Supreme Court indicated, as it appears to us, that the High Court not being a Court of Appeal, should not have imposed its own opinion on the Revenue authorities, exercising judicial or even quasi-judicial functions when the matter is sent for fresh adjudication to such Revenue authorities. In the case before us, no matter or *lis* is sent back to the Syndicate for its adjudication afresh with directions which would have made the order vulnerable in the light of the decision cited above.

21. Mr. Banerjee next submitted that if the Syndicate did not act in accordance with law, the relevant dispute should have been left to that body for fresh adjudication and there was no scope within the rule to issue any further directions as was done. It may be mentioned that Mr. Banerjee did not challenge the conclusion of the learned Judge to the effect that the Syndicate did not discharge its functions in accordance with law.

22. Mr. Noni Coomar Chakravorti, learned Advocate appearing for the Petitioners-

Respondents has submitted on the other hand that Article 226 confers wide powers to the High Court to mould relief to meet the peculiar and complicated requirements of the country. It was laid down in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, as follows:

This Article (226) is couched in comprehensive phraseology and it *ex facie* confers wide powers on the High Court to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs as in the nature of prerogative writs as understood in England, but the scope of those writs also widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from there. That apart, High Court can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the relief to meet the peculiar and complicated requirements of this country.

23. We have seen in the facts of the case before us that the College is without any Governing Body *de facto* or otherwise, since at least December 14, 1971 and is in the charge of Administrator. The internecine dispute has seriously affected the normal functioning of the College to the prejudice of the cause of education sought to be imparted in the College and to the detriment of the students of the institution. It is incumbent and proper and in public interest that this state of affairs should come to an end without delay and a situation should be created in which the College functions normally under a duly constituted Governing Body subject to the overall control of the University and its authorities. Further reference of the dispute to the Syndicate about the election and nomination of members to the Governing Body will only prolong the dispute to the prejudice of concerned public and students when the normal term of members has long expired. We, therefore, find that the learned Judge acted within jurisdiction in issuing directions for early constitution of the Governing Body.

24. We shall now consider if the Appellant No. 1 in F.M.A. No. 668 of 1973 has any *locus standi* to prefer the appeal in the events that have come to light. He claimed to be the *ex officio* Secretary of the disputed Governing Body since his alleged temporary appointment as Principal on February 25, 1969, on the basis of the resolution of the provisional Governing Body which was again, according to resolution, subject to the approval of the Vice-Chancellor. This approval was not given by the Vice-Chancellor as will appear from the letter of May 23, 1969. Though this letter was not withdrawn, it appears that on May 26, 1969, the Vice-Chancellor approved the constitution of the Governing Body and permitted the Respondent No. 5 (Appellant No. 1) to continue as temporary Principal. We have not been shown any provision in the Act or the Statutes that the constitution of the Governing Body requires approval of the Vice-Chancellor or that he has the power to appoint the Principal of the College for six months which seems to have been extended from time to time. It further appears that the letters of

resignation of the Respondent No. 5 (Appellant No. 1) and the Respondent No. 6 (Appellant No. 2) from the College were duly accepted by the Joint Administrators of the College, who were no other than the Respondent No. 5 (Appellant No. 1) himself and the Respondent No. 10 in the rule. The said Appellant No. 1 claimed that he was reinstated again, but the same has been rightly disbelieved by the learned Judge in absence of any document or evidence. We are, therefore, of opinion that the Appellant No. 1 has no subsisting right, which is entirely personal, to proceed with the appeal as in view of his undisputed resignation, he was no longer a member of the Governing Body since at least July 31, 1971. The same is the position with regard to the Respondent No. 6 (Appellant No. 2) who also ceased to be a member of the teaching staff on acceptance of his resignation with effect from July 31, 1971. The Appellants Nos. 5 to 7 who are the nominated members of the University and its officers are not in a position to press the appeal when the University is agreeable to the appointment of an Administrator by the University for reconstitution of the Governing Body of the College. The alleged donor of the disputed Governing Body did not again accept his election in the Governing Body as donor.

25. Statute 94 provides for the term of elected and nominated members of the Governing Body. The tenure of office of the members, as already indicated, has long expired though the members have only the right to serve as members till their respective successors take charge. By the appointment of the Administrator in this appeal on May 29, 1973, in C.R. No. 769(M) of 1973, who has been vested with all powers of Governing Bodies of the respective Colleges under the Calcutta University Act and its Statutes, the disputed Governing Body has practically ceased to exist without any scope of revival. Further, there is even no Secretary of the Governing Body who under Statute 99 is to be in charge of the office. For all these reasons, it appears to us that the Governing Body has ceased to exist for all practical purposes and it is necessary to have a new Governing Body of the College as early as possible.

26. The learned Judge has appointed a Special Officer to constitute the new Governing Body and has given directions in that behalf which, it appears to us, are complete and sufficient in all respects and we find no reason to alter or vary the same. The difficulty, however, is created by the appointment of a Special Officer who has no statutory authority to conduct such constitution of the Governing Body. u/s 4, Sub-section (8) of the said Act, the University has statutory duty to exercise general supervision and control over the colleges affiliated to it. Further, by its Sub-section (11), the University has the right to dissolve a Governing Body, inter alia, of affiliated colleges and to appoint Administrator or ad hoc Governing Body. Since there is no existing Governing Body, such power, in our opinion, would include through such Administrator or ad hoc Governing Body, the constitution of a new Governing Body in accordance with law. As writ directions and orders under Article 226(1) can also be issued to person or authority having statutory duty to discharge, we propose to direct the University to appoint an Administrator only for the purpose of reconstitution of

the new Governing Body in accordance with the directions on the Special Officer set forth in judgment under appeal with necessary and consequential variations. We, accordingly, direct that the University within three weeks from date will appoint an Administrator to reconstitute the Governing Body of the College with utmost expedition, strictly following the directions given in that behalf by the learned Judge. All the directions with necessary and consequential variations will be strictly observed by the Administrator appointed by the University and to avoid all disputes, the said directions are set out below.

27. The appeals are, accordingly, allowed in part to the extent that the provisions in order relating only to the appointment of the Special Officer are substituted by the appointment of the Administrator to be made by the University as indicated above. The other findings of the learned Judge are affirmed. There will be no order for costs in the circumstances, in either of these appeals. Liberty to mention. Directions referred to above.

(1) Mr. N.C. Chakravorty appointed as Administrator by this Court by order dated May 29, 1973, in C.R. No. 769 of 1973 will continue until the Governing Body is reconstituted as herein directed. He will run the College at Madral, P.S. Jagatdal, dist. 24-Parganas.

(2) The University within three weeks from the date of this order will appoint an Administrator who will reconstitute the Governing Body of the disputed institution according to Statute 93 and in accordance with law.

(3) In so doing, the Administrator appointed by the University would keep the office of Principal cum member of the Governing Body vacant to be filled up hereinafter when the Principal is appointed according to the regulations.

(4) In holding the election of the teachers representatives, the Administrator appointed by the University would confine such election to such whole-time teachers as were on the rolls on May 25, 1969, but excluding those who voluntarily resigned thereafter and such other whole-time teachers who might have been appointed by the Administrators appointed by this Court in G.R. No. 1746(W) of 1969 and F.M.A. No. 455 of 1969 and approved by the University.

(5) In sponsoring the names as in Statute 93(1)(e), the Administrator appointed by the University would follow the terms and conditions of the trust deed dated May 17, 1965.

(6) The Administrator appointed by the University would effect the reconstitution as early as possible preferably within a month from the date of his appointment and he would then forward the names of the members so reconstituted to the University asking for the University nominees.

(7) On the University making its nomination to the body so reconstituted, the Governing Body will then hold its first meeting at the time and place to be fixed by the Administrator appointed by the University in consultation with the members to elect the President under the supervision of the said Administrator.

(8) The President being elected, the names of the members and the President shall be reported by the Administrator appointed by the University to the University and the Administrator appointed by this Court would then hand over the charge of the institution to such a Governing Body.

(9) Thereupon, both the Administrators shall stand discharged.

(10) Nothing said in this order would fetter the University and its authorities from taking any step or action with relation to such reconstitution in accordance with law as they may consider necessary.

(11) All the parties are directed to give necessary assistance to the Administrator appointed by the University in discharging above functions including production of books, registers and documents in their custody.

28. The office is directed to prepare the decree of the above appeals with utmost expedition. The department will also supply the certified copy of the judgment, if and when applied for, to the parties as early as possible.

B.C. ROY J.

29. I agree.