
(2003) 12 CAL CK 0025
In the Calcutta High Court

Case No : Writ Petition No's. 9475 (W) and 13878 (W) of 2003

Uttam Das and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 CHN 171

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Bhudeb Chatterjee, for the Appellant; Mrinal Kanti Roy, for respondent No. 10, Aruna Mukherjee and Ashalata Ghosh, in W.P. No. 9475(W) of 2003 and Sipra Chandra in W.P. No. 13878(W) of 2003, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—Both these writ applications were heard analogously as the questions involved herein are interlinked.

2. By the first writ application, the writ petitioner No. 1, claiming to be the Secretary of newly constituted Managing Committee of the school and the school itself, the other petitioner, have prayed for direction upon the respondent Nos. 6 and 7 to allow the petitioner No. 1 and the newly constituted Managing Committee to operate bank account for running of the school.

3. By the second writ application, those petitioners have prayed for quashing of order dated June 10, 2003 passed by the Civil Judge (Junior Division), Third Court, Tamluk in Title Suit No. 43 of 2003 in the light of subsequent order dated June 22, 2003 being order No. 6.

4. The following facts are not in dispute.

5. The private respondent Nos. 8 and 9 of the second writ application filed a suit being Title Suit No. 43 of 2003 in the Court of Civil Judge (Junior Division), Tamluk thereby praying for declaration that fixation of a date being 27th April, 2003 for election of the Managing Committee of the school was illegal and for

permanent injunction restraining the defendants therein from proceeding with the election for reconstitution of Managing Committee.

6. Those two respondents claimed to be guardian of the students of the school and in the said suit the Headmaster of the school and previous Secretary of the school were only made parties.

7. In the said suit, the plaintiffs therein filed an application for injunction restraining the defendants from holding election on April 27, 2003, On such application the learned Trial Judge by order dated April 25, 2003 issued an interim order of injunction directing stay of holding election on April 27, 2003 till 12th May, 2003.

8. However, since the said order was not communicated to the school authority, the election was held and new Managing Committee was constituted of which the present petitioner No. 1 is the Secretary. It appears from the record that the State Government has also placed departmental nominee in the reconstituted Managing Committee.

9. Subsequently, the plaintiffs filed application praying for restraining the newly constituted Managing Committee from functioning. The plaintiffs also filed another application alleging violation of the injunction order earlier granted by Court on April 25, 2003. On those applications, the learned Civil Judge (Junior Division) issued notice upon defendant No. 2 of the suits viz, Headmaster as to why appropriate proceeding for contempt should not be instituted. The Court also directed that the newly constituted Managing Committee should not act any further relating to administration of the school including financial transaction.

10. In view of the second order passed by the learned Civil Judge, (Junior Division) the newly constituted Managing Committee filed an application under Order 1 Rule 10(2) of the CPC for being added as party defendant.

11. The learned Civil Judge (Junior Division) by order No. 16 dated 22nd July, 2003 rejected such application holding that the applicants are neither necessary nor proper party.

12. The learned Civil Judge (Junior Division), however, by order No. 14 dated July 14, 2003 held that the Headmaster of the school cannot be held guilty of the contempt as the order of stay was not communicated. However, the learned Judge maintained that old Managing Committee should function and administer the school till the disposal of the suit or till 31st December, 2003 whichever is earlier.

13. In view of the above position of the suit, the bank authority did not permit the present petitioner No. 1 to operate the bank account which compelled the petitioners to file the first writ application. Subsequently, second writ application was filed praying for certiorari for the purpose of quashing the order of injunction against functioning of the newly constituted Managing Committee. Both the writ applications have been assigned to this Court by the Hon"ble Chief Justice and,

as such, both the writ applications were heard together.

14. After hearing the learned Counsel for the parties and after going through the materials on record, I find that the civil proceeding initiated by two guardians and orders of injunction passed therein have affected the functioning of the new Managing Committee, although, the new Managing Committee was not made parties in the suit and even when the newly constituted Managing Committee prayed for being added as party defendant, their prayer was refused on the ground that they are neither necessary nor proper party. The result is that the newly constituted Committee is unable to function in view of the order of the learned Trial Judge. It may not be out place to mention here that in the civil suit filed by the two guardians the State/respondents are not made parties.

15. Mr. Chatterjee, the learned Counsel appearing on behalf of the petitioners, by placing strong reliance upon the decision of the Supreme Court in the case of *Surya Dev Rai Vs. Ram Chander Rai and Others*, , has prayed for quashing of the order of injunction so far the petitioners are concerned, Mr. Chatterjee contends that the Court below did not allow the petitioners to be added as party but nevertheless maintained the order of injunction restraining the newly constituted Managing Committee from performing its duties. This, Mr. Chatterjee contends, has interfered with the right of the petitioners in exercising their rights and at the same time, such order was passed in violation of natural justice. Mr. Chatterjee further points out that the Civil Court has no jurisdiction to adjudicate the dispute alleging illegality of the election when State-respondents and the Board are not made parties. He, therefore, prays for quashing of the entire civil proceedings.

16. Mr. Roy, the learned Counsel appearing on behalf of the defendant of the suit, has opposed this application contending that this writ application praying for quashing of the civil proceeding, is not maintainable and it is the duty of the petitioners to challenge the injunction order by preferring appeal in accordance with law.

17. The learned Advocates appearing on behalf of the State/respondents have not disputed that the State Government has approved the newly constituted Managing Committee and they have placed departmental nominee in such committee.

18. After hearing the learned Counsel for the parties and after going through the materials on record, I find that this is a fit case where by issuing writ of certiorari the order of injunction passed against the petitioners should be quashed.

19. As pointed out by the Supreme Court in *Surya Dev Rai v. Ramchandra Rai* (supra) certiorari under Article 226 of the Constitution of India can be issued for correcting gross error of jurisdiction i.e. when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none or (ii) in excess of its jurisdiction by overstepping limits of jurisdiction or (iii) acting in flagrant violation of law or rules of procedure or acting in violation

of the principles of natural justice where there is no procedure provided and thereby occasioning failure of justice.

20. The learned Trial Judge, in this case, restrained the newly constituted Managing Committee from functioning but when such Committee wanted to be added as party, curiously, refused their prayer. This is an error which cannot be perceived. A party must be given opportunity of hearing if his right is interfered in any way. Here such opportunity has not been given to the petitioners. Moreover, the suit itself is not maintainable in the absence of State/ respondents and the Board of Secondary Education and, as such, on the face of allegations made therein, no declaration can be given in favour of the plaintiffs in the absence of these necessary parties. Such a frivolous proceeding, in my opinion, should be nipped in the bud.

21. I, thus, issue a writ of certiorari thereby quashing the suit itself as the same is not maintainable. I also set aside the order of injunction restraining the petitioners from functioning.

22. If the plaintiffs of the said suit think that there is any irregularity in the process of election, they are free to take appropriate action before appropriate forum in accordance with law and the quashing of the suit will not stand in their way in approaching appropriate forum in accordance with law. The bank authorities are directed to permit the present petitioners to operate bank account so long the election of the newly constituted Managing Committee is not declared illegal by any competent forum.

23. I, thus, dispose of both the writ applications with above observation.

24. In the facts and, circumstances, there will be, however, no order as to costs.

25. As prayed for, let xerox certified copy of this order be given to the parties within one week from the date of making of such application.