

(2013) 04 CAL CK 0035
In the Calcutta High Court
Case No : Writ Petition No. 9266 (W) of 2013

Wahiduzzaman and Others	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 CALLT 380 : (2013) 3 CHN 645 : (2013) LabIC 2786 :
(2013) 3 WBLR 536

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Tapabrata Chakraborty and Mr. Shaktipada Jana, for the Appellant; Amit Prakash Lahiri and Ms. K. Bhattacharjee for the Respondents No. 3 and 4, Mr. Wasef Ali Mondal for the Respondents No. 8, Mr. K. Bhattacharjee and Mr. Biswajit De for the State, for the Respondent

Final Decision : Disposed Off

Judgement

Debasish Kar Gupta, J.—Let the affidavit of service be kept on record. This writ application is filed by the petitioners assailing an order passed by the West Bengal Board of Secondary Education in compliance of a final order dated March 13, 2013 passed in the matter of Managing Committee, M.L. Jubilee Institution v. State of West Bengal & Ors. (In Re: W.P. No. 2196(W) of 2013). By virtue of the impugned order the respondent board appointed Professor (Dr.) S. Manal Shah Alquadri, Vice Chairman, West Bengal Urdu Academy, Minority Affairs and Madrasah Education Department, Government of West Bengal to act as an Administrator in M.L. Jubilee Institution. District-Kolkata.

2. According to the petitioners, the impugned order was passed without adhering to the provisions of proviso to sub rule (1) of Rule 8 of Rules for Management of Recognised Non Government Institution (Aided and Unaided), 1969 (hereinafter referred to as "the Said Rule"). According to the petitioner, the above provision prescribes for appointment of an administrator In respect of a non government

aided education institution after giving due regard to the report of the Director of School Education, West Bengal (now designated as Commissioner, School Education, West Bengal). According to the petitioner, the respondent board took into consideration the reports of the Commissioner of Police, Kolkata and that of District Inspector of Schools (SE), Kolkata apart from the reports submitted by the Commissioner, School Education, Government of West Bengal. Drawing the attention of this Court towards the report submitted by the Commissioner, School Education Department, West Bengal submitted under Memo No. 1160SC/G dated October 19, 2012 it is further submitted on behalf of the petitioners that the report was prepared relying simply upon the report of the Commissioner of Police, Kolkata without independent application of mind after conducting an enquiry.

3. It is submitted by Mr. Amit Prakash Lahiri, learned Advocate appearing for the respondent Nos. 3 and 4 that the proviso to sub rule (1) of Rule 8 of the said Rule purports that due regard should be given to the report of the Commissioner. School Education, West Bengal. It does not mean or purport that other reports or situations or complaints should not be taken into consideration by the Board while exercising the power under the above provisions. It is also submitted by Mr. Lahiri that the Commissioner, School Education, West Bengal Board prepared his report after due consideration of the reports submitted by the Commissioner of Police, Kolkata.

4. The above submissions are repeated and reiterated by Mr. K. Bhattacharjee, learned additional Government pleader, appearing on behalf of the State respondents.

5. Similar stand is taken by the learned advocate appearing on behalf of the respondent No. 8. At the very outset it is submitted by him that this writ application is not maintainable in view of the fact 8 members out of 13 members of the superceded managing committee of the institution concerned filed this writ application. According to him, this writ application is liable to be dismissed on the ground of non-joinder of parties. He further repeats and reiterates the submissions made by Mr. Lahiri as recorded hereinabove.

6. At the very outset the point of maintainability is taken up for consideration. It is not in dispute that the petitioners are 8 members out of 13 of the superceded managing committee of the educational institution in question. Admittedly they have come up before this Court for espousing their own causes. Therefore, this writ application cannot be dismissed in limine on the point of maintainability. It is settled principles of law that the ground for consideration the question of addition of parties is that a necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective can be made but whose presence is necessary for a complete and final decision. Reference may be made to the decision of Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, and the relevant portion of the above decision are set out below:--

(7) To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

7. In view of the above settled principles of law I find that objection with regard to the maintainability of this writ application is misconceived and the same is rejected. Because the presence of the parties present in this case is adequate for complete and final decision in this case.

8. So far as the merits of this case is concerned, I find that the respondent board discharged a statutory function in passing the impugned order in exercising of the powers conferred upon it by the provisions of sub rule (1) of Rule 8 of the said Rules. For proper adjudication of this matter the above provision is set out below:--

8. Power of Executive Committee to approve and Supersede Committee to appoint Administrator or Ad hoc Committee and to grant special constitution:

(1) The constitution of a Committee shall be subject to the approval of the Executive Committee and the Executive Committee shall have the power to supersede a Committee that has, in its opinion, not been functioning properly and to appoint an Administrator or an Ad hoc Committee to exercise the power and perform the functions of the Committee;

Provided that before superseding a Committee under this rule the Executive Committees shall have due regard to the report of the Director and shall afford a reasonable opportunity to the Committee to present its case before the Executive Committee.

9. After perusing the proviso to the above provision I find that the respondent board was under statutory obligation to discharge its aforesaid function giving due regard to the report of the respondent No. 2.

10. It is settled principles of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. But in case of a statutory authority it has no power to do anything unless those powers are conferred on it by the statute which creates it. Reference may be made to the decision of Maniruddin Bepari Vs. The Chairman of the Municipal Commissioners, Dacca Municipality,

It is a fundamental principle of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in the case of a statutory corporation it is just the other way. The corporation has no power to do anything unless those powers are conferred on it by the statute which creates it. In the Municipal Act, 1884, I do not find any power given to the Municipality to allow the use of a

public thoroughfare from day to day for any other purpose than a public pathway. It has no doubt the power to divert a road and if it diverts it, a portion of the old road which is no longer necessary to be used as a road is land for all intents and purposes and as I have stated, the Municipality can deal with that land, which is no longer used as road, under the provisions of section 34. Whatever the doubt there may have been in this respect has been removed by reason of the amendment of section 30 of the said Municipal Act by vesting the subsoil of the road also to the Municipal Commissioners.

11. The above proposition of law was repeated and reiterated by a Division Bench of this Court in the matter of Asian Leather Limited and Another Vs. Kolkata Municipal Corporation and Others, .

6. Those writ applications were contested by the Kolkata Municipal Corporation by filing affidavits-in-opposition and the defence taken by the Corporation was that the year's budget estimate of the Corporation regarding rates, taxes, fees and charges to be levied by the Corporation contained a specific provision for realization of the fees for Drainage Development and specific rates were mentioned therein and the Mayor with the concurrence of the members of the Mayor-in-Council and the Municipal Commissioner duly approved the levy of the Drainage Development Fees at the specified rates. According to the Corporation, the imposition of the Drainage Development Fees was, thus, in conformity with the provisions contained in the Kolkata Municipal Corporation Act and the Rules and the Regulations framed thereunder and therefore, there was no illegality on the part of the Corporation in demanding the Drainage Development Fees as condition precedent for grant of sanction of the building plans. The Corporation, therefore, prayed for dismissal of those writ applications.

12. In view of the above the respondent board was under obligation to give due regard to the report of the respondent No. 2 though it does not purport that the respondent board should take into consideration the aforesaid report only and nothing else. But the responsibility was cast upon the respondent No. 2 to prepare a report applying its mind or after conducting an enquiry and not proceed on the basis of a report by a stranger. It takes us to the report prepared by the respondent No. 2. For proper consideration of the same it is quoted below:--

Government of West Bengal Directorate of School Education Bikash Bhaban, 7th floor, Salt Lake, Kolkata 91

Memo No. 1160SC/G

Dated :19/10/2012

From: The Commissioner, School Education, West Bengal

To: The Administrator, West Bengal Board of Secondary Education 77/2, Park Street, Kolkata 700 016.

Sub: Managing Committee of M.L. Jubilee Institution, Kolkata

Sir,

This is to inform that the Kolkata Police had conducted an enquiry in the matter of some allegations as raised by Mr. Jahangir Molla against the conduct of the Managing Committee of the M.L. Jubilee Institution. The Police Report was given to the Director of School Education and also to the Secretary, West Bengal Board of Secondary Education. On the basis of the report, Board of Secondary Education could take action and dismantle the Managing Committee. The Police report draws our serious attention to some such facts which require immediate intervention for which the Board is the final authority such as disciplinary action against the teachers, code of conduct of the teachers, medium of instruction in the school, school discipline code, and matters relating to the conduct of the managing Committee etc. This said Police Report as communicated vide memo No. 981(2) SE(s) dated 15.6.2010, is enclosed herewith for your perusal.

Now in the circumstances, the whole matter draws our attention to the logical inferences as may be drawn that Managing Committee of M.L. Jubilee Institution, Kolkata is not performing its proper duty and unconstitutional matters are getting ground. The entire matter is brought to the notice of the West Bengal Board of Secondary Education for appropriate action.

Commissioner, School Education West Bengal

13. After considering the above report this Court is surprised to note that although a statutory obligation was cast upon the respondent No. 2, he did not even care to record the subject matter on which the Commissioner of Police, Kolkata submitted his report and the basis on which the respondent No. 2 relied upon that report. Therefore, the above report was cryptic one and Just a leap service to the statutory responsibility cast upon him. Such a decision making process cannot be approved by a Court sitting in writ jurisdiction under Article 226 of the Constitution of India. This Court should not hesitate to give proper relief to the petitioners molding the prayers made in the writ application.

14. In view of the above observations and discussions made hereinabove, the impugned order dated March 22, (sic 13) 2013 and the report of the Commissioner, School Education, West Bengal dated October 19, 2012 are quashed and set aside.

15. This order will not, however, prevent the West Bengal Board of Secondary Education to take proper steps in the matter in the light of the observations made hereinabove.

16. This writ application is, thus, disposed of. Let there will be a cost of Rs. 2000.00 to be paid towards the lawyer's fees for the petitioner by the West Bengal Board of Secondary Education within 15 days from date. The respondent Board is further directed to deposit the receipt to be issued by the concerned learned advocate in acknowledgement of receipt of the cost in the office of the

learned Registrar General of this Court within the aforesaid period.

Urgent photostat copy of the order, if applied for, shall be given to the parties on the usual undertakings.