

(1974) 10 CAL CK 0001

Calcutta High Court

Case No: Civil Rule No. 1684 of 1974

Amarendra Nath Chatterjee

APPELLANT

Vs

Dwijendra Nath Halder and
Others

RESPONDENT

Date of Decision: Oct. 4, 1974

Acts Referred:

- Companies Act, 1956 - Section 287

Citation: 79 CWN 260

Hon'ble Judges: Amal Krishna De, J

Bench: Single Bench

Advocate: Saktinath Mukherji and Abu Jafar M.S. Alam, for the Appellant; M.N. Ghosh, Samar Ghosh for O.P. Nos. 1 to 5, S.K. Roy Chaudhury and Bidyut Kumar Banerjee for O.P. No. 7, for the Respondent

Judgement

Mr. Amal Krishna De, J.

The petitioner was elected Secretary of the Managing Committee of Purna Chandra Mazumdar Girls' Higher Secondary School, a recognised-non-Government aided Institution, to be hereafter called the "School" by the 11 members with which the Managing Committee was initially constituted. He started Title suit No. 131/73 for declaration that the two meetings of the Managing Committee, convened and attended by only 5 members of the Managing Committee on 23.5.73 and 2.7.73 are illegal, void, invalid and ineffective, for a further declaration that the petitioner is still the Secretary and for a permanent injunction restraining the opposite party No. 1 from interfering with his functioning as the Secretary. In the suit he asked for a temporary injunction in terms of his prayer for a permanent injunction. Opposite parties Nos. 1 to 5 who convened and attended those meetings opposed his prayer. The learned Munsif granted the prayer on 6.11.73. Opposite Parties Nos. 1 to 5 filed Misc. Appeal No. 818/73 against that order. The Learned Subordinate Judge, who heard the appeal, has allowed it rejecting the petitioner's prayer for temporary

injunction. It is against that order that the present revisional application has been filed. The main ground on which the learned Subordinate Judge has allowed the appeal is that the plaintiff petitioner has no prima facie case and that he has not also made out any case of apparent urgency and personal injury to him. The facts which are not disputed are these :

2. The Managing Committee of the School was initially constituted with 11 members. Of these 11 members, four are guardian representative, three teachers, representatives and Life members, one donor one departmental nominee and the Head of the Institution. The departmental nominee, the local Administrative S.D.O., was elected by them as the President of the Committee. One of them", Dulal Chandra Maitra who was a guardian representative, was elected the Vice-President. The S.D.O. resigned from the office of President and Krishna Pada Dutta was elected President in his place. He, thereafter, ceased to be a member of the Committee, and necessarily of the office of the Vice-President, from 18.4.74 when his ward left the school. The life member had died in 1972. The number of members of the committee was thus reduced to, and stood at, nine by such death and cessation of membership before 1973. These two casual vacancies by death and cessation of membership have not been filled up. Five members of the Managing Committee also reduced, in strength made a requisition for a Special meeting to the petitioner-Secretary. On 23.5.73 these five members, i.e. opposite parties Nos. 1 to 5, held a meeting and passed a resolution purporting to remove the petitioner-Secretary from the office of the Secretary. Latter those five members held another meeting on 2.7.73 and elected opposite party No. 1 as the Secretary of the Committee in petitioner's place. Both the meetings held on 23.5.73 and 2.7.73 were convened and attended by only five members of the Managing Committee. No business could be transacted, i.e. no resolution could be legally and validly passed, in a meeting without a quorum. Sub-Rule 2 of Rule 10 of the "Rules for Management of Recognised Non-Government Institution" (Aided and unaided) 1969, made in exercise of the powers conferred by the West Bengal Board of Secondary Education Act. 1969, has fixed the quorum. It is 50 per cent of members. Explanation to the Rule is that it is fifty per centum of the total number, adding one, if the total number of members is an odd number, as here being shown. That petitioner's submission is that the total number of members on 23.5.73 and 2.7.73 was $11 + 1 = 12$ whereas the opposite party say it was $9 + 1 = 10$. The learned Munsif accepted the petitioner's submission. The learned Subordinate Judge has preferred the opposite parties contention. When a Committee is initially constituted with eleven members, the total number of that committee with 11 members is to be considered to find out the members to form a quorum. The perpetual laid down by the Rule to fix quorum cannot change with the variation in the number of members of the committee at the time of each meeting. If it is to change with the variation of the number of members at the time of each meeting, it will make the rule of quorum a meaningless provision. What is intended by Rule 10(2) is that the

Managing Committee will not held any meeting if at any time its total number of the existing members goes below 50 per cent of the initial strength. It is only 50 per cent of the number of members constituting the committee who can take decisions for and as the Committee. It was argued that if the Managing Committee's strength of eleven is reduced by death or resignation or cessation of membership, to fall below six at any time and if the quorum required is 50 per cent of the members with whom the committee was originally constituted, the result would be that the Managing Committee would not be able to function as such. For such contingency the clear provision is in rule 11 for filling up of casual vacancies by election in case of teacher members, in case of nominated member of nomination from the department and by co-option in case of other members. It is only when such re-strengthening of the Managing Committee is made in accordance with Rule 11 that the Managing Committee becomes active to meet and take decisions. It was also argued that as casual vacancies could be filled up by co-option i.e. election by existing members, it means that the existing members may also function as managing committee before co-option. The powers under rule 11 are only to reform the managing committee by the existing members and not for the functioning of the managing committee as such. That is clear from rule 11 itself. A meeting to co-opt is a function different from a meeting to transact business as the managing committee. 50 percent of the total number means 50 percent of the total number with which the managing committee initially constituted,. As the meetings were attended by only 5 members, there was no meeting and the resolution passed by them was ineffective. The petitioner has, therefore, prima facie case for trial. The view taken above accords with the decision in the case of Newhaven Local Board v. Newhaven School Board, reported in Chancery Division, Vol. XXX, Page 350. The Public Health Act, 1897 came up for consideration in that case. Seven members of the Local Board Constituted under the Public Health Act 1875 and consisting of nine members, resigned, so that the quorum of three required by schedule 1, r. 2 was not left. It follows from the decision that the whole number of members includes all casual vacancies. Quorum is laid down by the Act or Rules made in the exercise of the powers given by the Act. When it was intended that the Quorum would be related to the existing number of members at a given time, it was so specifically laid] down. It will pertinent if reference is made to section 82 of the Bengal Municipal Act 1932. Its subsection (2) is that quorum shall be in any Municipality in which the Commissioners are more than 15, five. The proviso to that sub-section, is that in case where the total number of commissioners holding office for the time being, is not evenly divisible by three, 1/3rd shall be ascertained by taking the number next above such total number which is evenly divisible by three, as the number to be divided. Similar is the provision in section 287 of the Indian Companies Act, 1956. Sub-section (2) of that section is that the Quorum for a meeting of the Board of Directors of a company shall be 1/3rd of its total strength or two Directors whichever is higher. Total Strength has been defined in that section as the total strength of Board of Directors of a company as determined in pursuance of the Act

after deducting therefrom the number of the Directors, if any, whose place may be vacant at the time. It is thus clear that Rule 10(2) of the Rules means that quorum shall be 50 per cent of the total number of members with which the committee was initially constituted. As the two meetings held on 23.5.73 and 2.7.73 were convened and attended by only 5 members the resolutions adopted there were invalid and have no legal effect.

3. The other attack on the resolutions is that 5 members convened the meetings without referring to the President as required by Rule 18. There was no President when the meeting was convened. It was argued on behalf of the opposite parties that Rule 18 could not be followed as there was no President. Rule 17 provides for requisition for a special meeting to the Secretary by four members: Rule 18 is that the requisitionists shall refer to the President if the Secretary fails and that half of the total number of members shall have power to convene the meeting if the President also fails them. These are the restrictions so that special meetings may not be called even if intended by half of the total number of members. The rules are that the requisitionists should also be not less than half of the total number of members to convene a special meetings though four would do to send the requisition to the Secretary. This distinction is purposeful. If at any given time the number of members of a managing committee fails below four, no requisition will be possible but if the Secretary and the President fail to call a meeting on such requisition, the requisition late will have to be at least half of the total number to convene it. Vice-President cannot do service for the President in Rule 18, and no stage in Rule 18 can be skipped. If a President has not been elected before a Special meeting the members have to elect a President first and then go through Rule 18 to convene a special meeting. Non-observance of this Rule 18 has also made the resolution bad. There is also no statement that the second meeting held on 2.7.73 by a special meeting and convened filling rule 17 and 18. Injury to the petitioner and existence of urgency are apparent. If the Secretary of the Managing Committee is illegally removed, the function of the School comes to stand still. Any correspondence with the proper authority in the absence of the Secretary may be against the interest of the School. Rule 28 lays down the powers of the committee. A committee cannot function when the Secretary cannot exercise powers properly. That is a situation which should not be allowed to happen. Actions that the Managing Committee may take in the absence of the Secretary will involve the school and its funds and bring in chaos. In the event of the plaintiff's success the complication, so created will be difficult to be removed, but if the defendants are restrained and the plaintiff fails in the suit there will be no such consequence. That favours grant of injunction.

4. It is quite clear that the learned Subordinate Judge has exercised his jurisdiction in both these respects with material irregularity and illegality. His order will, therefore, be set aside. In the result, I make this Rule absolute, set aside the order of the learned Subordinate Judge dated 26.4.74 in Misc. Appeal No. 818/73 and restore

that of the Learned Munsif dated 6.11.73 in T.S. No. 131/73.

There will be no order as to costs in this Rule.