

(2012) 12 CAL CK 0017

Calcutta High Court

Case No: Writ Petition No. 19285 (W) of 2010

Elahi Box Mandal

APPELLANT

Vs

State of W.B.

RESPONDENT

Date of Decision: Dec. 5, 2012**Citation:** (2013) 2 CHN 56**Hon'ble Judges:** Harish Tandon, J**Bench:** Single Bench

Advocate: Mukul Lahiri, Anindya Lahiri and Saurav Mondal in W.P. 19285 W of 2010, Harun Al Rashid and Nudrat Jabeen W.P. No. 24990 W of 2010, for the Appellant; Harun Al Rashid in W.P. 24990 (W) of 2010, Mukul Lahiri, Anindya Lahiri W.P. 24990 (W) of 2010, Sulagna Dawn for Pradhan and Rezaul Hossain in W.P. 19285 (W) of 2010, for the Respondent

Judgement

Harish Tandon, J.

These two writ petitions were heard together and are disposed of by a common judgment. The writ petition No. 19285 (W) of 2010 is at the instance of the Secretary, President, Head Sahayika and Sahayikas of Jhowbona Vikutala Colony Sishu Siksha Kendra and also two of the guardians of the pupils studying in the said Sishu Siksha Kendra (SSK), praying for an order to rescind, cancelled and quashed the Memo No. 649 (7VSSK/EN dated July 28, 2010 whereby and whereunder, the District Nodal Officer, Murshidabad directed the said S.S.K. to run at Gram Sansad-4 instead of Gram Sansad-10.

2. The writ petition No. 24990 (W) of 2010 is filed by the permanent residence of Jhowbona Vikutala Colony situate under Gram Sansad-4 in the district of Murshidabad who are also the respondent in W.P. No. 19285 (W) of 2010 praying for an order to implement of the said Memo No. 649 (7)/SSK/EN dated July 28, 2010.

3. Admittedly, the said SSK was located at Gram Sansad No. 4 which is adjoining to the village Trimohini under Gram Sansad-10 and both the Gram Sansad are under No. 2 Kederchandpur Gram Panchayat. Both the Gram Sansad are separated by

rivulet and are assessable to each other by a bamboo bridge.

4. According to the petitioner of 19285 (w) of 2010 (herein after referred to as the Managing Committee for brevity), the said SSK has a large number of pupils who are the permanent resident of Gram Sansad 10 whereas a negligible number of students belonging to the Gram Sansad-4 have enrolled their names with the said SSK. The said rivulet in rainy season shambles the bamboo bridge which is prone to any disaster and if any untoward incident happens, a large number of students would suffer the casualty. The Managing Committee considered the above aspect and to safeguard and protect the tendered children from such casualty, decided to shift the said SSK from Gram Sansad-4 to the adjoining village Trimohini under Gram Sansad-10. The said resolution was forwarded to the Block Development Officer and subsequently, the Siksha Samskriti Tathya "O" Krira Sthayee Samity of Nowda Panchayet Samity consented for shifting of the said SSK by adopting a resolution. The said SSK is shifted to the said village Trimohini under Gram Sansad-10 at a piece of land donated to the said SSK.

5. The petitioners of W.P. 24990 (w) of 2010 (hereinafter referred to as the respondent for the sake of convenience) made a representation before the District Nodal Officer complaining of the alleged shifting of the SSK from Gram Sansad-4 to Gram Sansad-10. The said representation was unattended which prompted the respondents to initiate a writ proceeding being W.P. No. 6170 (w) of 2010 before this Court. While disposing of the said writ petition, this Court directed the District Nodal Officer to consider and dispose of the representation made by the respondents within certain period. In compliance of the said order, by impugned memo, the District Nodal Officer directed the shifting back of the said SSK from Gram Sansad-10 to Gram Sansad-4.

6. Initially, the District Magistrate, Murshidabad was not made party in the writ petition. By order dated February 15, 2011, this Court added the District Magistrate, Murshidabad as party-respondent with further direction to hold an inquiry as to the running and functioning of the concerned SSK and also the actual state of affairs with regard to the controversy raised by the parties. In compliance of the said order, the report filed by the District Magistrate, Murshidabad reveals that the shifting of the SSK from Gram Sansad-4 to Gram Sansad-10 has been done illegally and without obtaining the permission from the competent authority.

7. Mr. Mukul Lahiri, the learned Advocate appearing for the Managing Committee submits that the resolution of the Managing Committee for shifting the SSK from Gram Sansad-4 to Gram Sansad-10 was ratified and approved by the Sthayee Samity being competent authority and the Nodal Officer cannot pass an order contrary to the above decision. He strenuously argues that the shifting was done to protect the children of Gram Sansad-10 from any casualty and such interest when, in fact, large number of students belonging to Gram Sansad-10 are studying in the said SSK. He submits that the decision for shifting the SSK was done in the larger interest which

has not been considered by the District Nodal Officer. Lastly, he submits that the establishment of the SSK is a community based programme and the government only provided some financial assistance and, therefore, the Managing Committee is the appropriate authority to take a decision relating to the establishment as well as the shifting of the SSK

8. Mr. Harun Al Rashid, the learned Advocate appearing for the respondents, however, submits that the Managing Committee is misusing the financial grant without imparting education to the students for whose benefit, the said SSK was established. He further submits that there is a primary school already established in Gram Sansad-10 whereas there is no primary school in Gram Sansad-4 and as such, the shifting of the SSK would deprive the pupils of Gram Sansad-4 to get the education at elementary level. He lastly submits that this Court directed the Nodal Officer to consider their representation and the impugned memo cannot be said to be without any authority and/or jurisdiction. From the respective submissions, it appears that both the writ petitions are counter litigation. The writ petition instituted by the Managing Committee is founded on the resolution of the Managing Committee to shift the S.S.K. from the Gram Sansad-4 to adjoining village Trimohini under Gram Sansad-10 which could not be superseded by the District Nodal Officer. According to the Managing Committee, the S.S.K. is established under the community based programme where the Managing Committee enjoins the freedom relating to administration and management. The decision to shift the S.S.K. was taken in the larger interest of the pupils of the Gram Sansad-10 which has been totally overlooked by the District Nodal Officer in issuing the impugned memo.

9. The Sarba Shiksha Kendra were established to impart the elementary education to all children up to the age of 14 years at the base level to provide the better assistance in reaching at the Gram Level. To provide the assistance for running the schools established by the Non-Government Organization Financial Aids were provided by the State Government to cater the needs of the left out children. Although, it is a community base programme but since the Financial Aid and Assistance is provided by the State certain norms and guidelines are issued from time to time for better quality of education. The District Nodal Officers are appointed to supervise the Sishu Siksha Kendra in a district. Therefore, it cannot be said that SSK getting financial aid/grant enjoins freedom relating to the establishment of the SSK as well as the shifting thereof from one Gram Sansad to another. The guidelines are issued in a larger interest of the local peoples by government order dated March 30, 1999 which provides the minimum eligible qualification of the sahayika/sahayikas administration and management and the responsibilities and obligation of the Panchayat and the authorities appointed for such purposes. By government order dated June 8, 2004 there shall be no SSK within one-kilometer radius of an existence primary school. The report of the District Magistrate reveals that there is an existence of Trimohini Natunpara SSK within the periphery of half kilometer from the said village Trimohini which can cater the needs

of primary education of the local children. It further appears therefrom that the SSK was established in Gram Sansad-4 for the benefit of the children of the Trimohini village. Although, there is the primary school within the Gram Sansad-4 but the same is 2.5 kilometer away from the said village. It is further reflected from the said report that the shifting of the SSK to village Trimohini would make impossible for the children of the Jhowbona Vikutala Colony to avail the benefit of elementary education at the doorstep. The shifting of the SSK would frustrate the entire scheme and/or programme as the children of Jhowbona Vikutala Colony would be deprived of the elementary education. There would be a large number of children would remain outside the formal education system and shall not have any access to an education which is one of the constitutional obligation on the State as well as the societies running the Educational Institution. Right to Education flows directly from Article 21 and is one of the most important fundamental rights. Since there is no corresponding constitutional right to the higher education. The fundamental stress should be made on a primary and elementary education so as to let a proper foundation for higher education.

10. The District Nodal Officer in the impugned memo has showed his anguish relating to accessibility of the education at the primary and elementary level if the shifting is permitted.

11. There is no hesitation in holding that the decisions to shift the SSK from Gram Sansad-4 to Gram Sansad-10 was arbitrary illegal and without application of mind.

12. Thus, I do not find any merit in the contention of the Managing Committee. The writ petition being W.P. No. 19285 (w) of 2010 is, therefore, dismissed.

13. Since the said memo issued by the District Nodal Officer is held to be legal and valid, there is no justification as to why the same should not be implemented. By the said memo, the District Nodal Officer has directed the Block Development Officer to take necessary steps to start the Jhowbona Vikutala Colony in its actual sanctioned place.

14. The writ petition No. 24990 is disposed of by directing the Block Development Officer, Nowda to implement the direction passed by the District Nodal Officer within eight weeks from the date of the communication of this order.

15. In the facts and circumstances, there shall be no order as to costs. Urgent photostat certified copy of the judgment; if applied for, be given to the parties on priority basis.