

(1994) 03 CAL CK 0018

Calcutta High Court

Case No: Civil Order of 1993

Himangshu Sekhar Bera

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: March 31, 1994**Acts Referred:**

- Constitution of India, 1950 - Article 21
- Management of Recognized Non Government Institutions (Aided and Unaided) Rules, 1969 - Rule 21, 25(1), 28(VIIA)

Citation: (1994) 1 ILR (Cal) 452**Hon'ble Judges:** Asok Kumar Ganguly, J**Bench:** Single Bench**Advocate:** Ashoke De, Dipankar Dutta and P.S. Bhattacharjee, for the Appellant; S.N. Ganguly and Sudipa Bose, for the Respondent**Final Decision:** Dismissed

Judgement

Asok Kumar Ganguly, J.

This writ application has been filed impugning inter alia the decision dated December 28, 1993, taken by same members of the Managing Committee of Maheshpur High School, P.O. Parulbari, Dist. Midnapore, (hereinafter called as the said school). In the said meeting about 6 members of the Managing Committee of the said school expressed their lack of confidence in Shri Himangshu Sekhar Bera, the Secretary of the said Managing Committee, the Petitioner. Thereafter, those 6 members of the Managing Committee in the said meeting elected another person amongst them as the Secretary of the Managing Committee of the said school. The main ground of challenge of the decision is that the said meeting was held without a proper agenda relating to the removal to the Petitioner from the post of Secretary of the said school. To my mind the question of legality of the resolution of the Managing Committee meeting dated December 28, cannot be agitated in a writ petition as is sought to be done here.

2. This Court is constrained to take this view inter alia on the ground that whether or not the Petitioner enjoys the confidence of certain private individual cannot be the subject-matter of adjudication by this Court in a writ petition. Furthermore, this writ petition is directed against the action of these private individuals as members of the Managing Committee of the said school. As members of the Managing Committee of the said school these private individuals do not enjoy any statutory status, nor has the Managing Committee of the said school any statutory status. This Court is also of the view that to continue as the Secretary of the Managing Committee of the said school is neither a constitutional nor a legal right of the petitions. As such any threatened deprivation of the said right does not and cannot bring the case within the jurisdiction of the writ Court.

3. In this case Mr. Ashok Dey, the learned Advocate appearing for the writ Petitioner, has sought to substantiate his argument with reference to various decisions, viz., the case of *Young V. Ladies Imperial Club Ltd.* 1922 (2) K.B. 523 The said decision was rendered in ordinary civil litigation between the parties about the propriety of an action of a Club for expulsion of its member. The learned Judges of the appeal Court in that decision were, inter alia, of the view that commission to summon "absent" members of the Committee affects the validity of the expulsion proceedings. These propositions cannot be disputed. But the said judgment has no application to the points in issue, namely, the maintainability of the writ petition in the facts of this case. On the other hand the said decision supports views which I am taking that in a dispute amongst the private individuals the proper forum is civil Court and not the Court presiding over the prerogative writ jurisdiction.

4. Mr. Dey also relied on a passage in the famous treatise "Judicial Remedies in Public Law" by Clive Lewis (Sweet & Maxwell, 1992). The following comment of the learned author in the said book has been relied upon by Mr. Dey.

5. In the field of education, for example, religious schools were incorporated into the statutory framework of education and maintained by local authorities. In so far as they exercise statutory powers, such bodies are subjected to judicial review. The above observations, I am afraid, do not in any way advance the contentions of Mr. Dey. It merely says that when the school established by local authorities, discharge statutory powers, such local authorities are amenable to judicial review. In the instant case, the school in question is not run by any local authority. The Managing Committee cannot be called either a local authority or local body. The Managing Committee is not even a body corporate. Those six members of the Managing Committee who represent the rival faction are neither discharging any statutory function in taking the resolution dated December 28. 1993. As such the aforesaid observations of the learned author actually go against the contention of the Petitioner about the maintainability of this writ petition.

6. While arguing this matter Mr. Dey gave much emphasis on Rule 21 of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided),

1969, (hereinafter referred to as the said Rules).

7. Rule 21 of the said Rules specifies the requirement of notice to be given for each meeting wherein the business to be transacted must be set forth in the agenda. The said rule also contains a mandate that without the consent of the three-fourths of the members present no business other than that so stated shall be transacted. The contention of Mr. Dey is that in the instant case Annex. "C is a notice for a requisition meeting where the agenda is as follows ; "To take vote on confidence over the office of Secretary ship. The contention of Mr. Dey is that the resolution of the meeting of the Managing Committee of the said school dated December 28, 1993 is illegal inasmuch as by the aforesaid resolution the Petitioner, has been sought to be removed from the post of Secretary and some other member of the Managing Committee have been appointed as Secretary in his place. This Court refrains from making any observation on the merit of the said complain. Even accepting the said submission as correct the Court is of the view that the alleged illegal holding of the meeting dated December 28, 1992, in the absence of a clear agenda by certain private individual in respect of their private dispute and about a person who does not enjoy any statutory status cannot and does not make the holding of the said meeting amenable to judicial review before a writ Court. Mr. Dipankar Dutta, the learned Advocate appearing as junior of Mr. Dey, has also drawn the attention of the Court to the Division Bench judgment in the case of *Ajad All Gazi v. The State of West Bengal* 1990 (2) C.H.N. 284. The attention of this Court has been drawn to the following observation of this Court, "ordinarily the writ does not lie against a private body, but the position will be entirely different if such body is visited with statutory duties and function." In this case this Court has already indicated that these six members of the Managing Committee while holding the meeting dated December 28, 1993, were not discharging any statutory duties and function and those members of the Managing Committee had no statutory status. As such the said decision doe;; not at all support the case of the writ Petitioner.

8. Reliance has also been placed on the decision in *Dholgobinda Koyal v. West Bengal Board of Secondary Education and Ors.* 1991 (1) CRI L.J. 222. In the said case the Managing Committee of the Institution in question by the impugned resolution purported to suspend the Petitioner but did not grant him the subsistence allowance. Such withdrawal of subsistence allowance of the Petitioner is in clear violation of the Petitioner's statutory right under Rule 28(VIIA) of the said Rules. As such, the said question can be examined by the writ Court. Even in some decisions of the Supreme Court it has been held that withdrawal of subsistence allowance amounts to deprivation of fundamental right of the concerned person under Article 21 of the Constitution. As such the impugned resolution of the Managing Committee of the school in question apart from being contrary to the -statutory mandate, it is also unconstitutional and as such the writ Court has ample jurisdiction to interfere in the said matter. In the said decision the learned Judge quashed the charges inasmuch as the same were based on stale allegation. The issuance of

charge-sheet and the initiation of disciplinary proceeding against the teachers is controlled by and governed under several statutory provisions as such the writ Court's jurisdiction to entertain the writ petition in that case was not understandably challenged and there is no occasion for the Court in that judgment to pronounce upon the said question. As such the said decision cannot be treated to be of any assistance to the writ Petitioner here.

9. Another decision was also cited by the learned Counsel for the Petitioner which is *Mahadev Khan and Ors. v. The State of West Bengal and Ors.* 1991 (1) C.L.J. 303. This Court is unable to appreciate how the decision in the said case can be of any assistance of the Petitioner. In the said case this Court came to the finding that the requirement of Rule 25(1) of the said Rules relating to confirmation of the records of the earlier meeting have been violated. Therefore, the Court came to the conclusion that the meeting hold in violation of the provision of Rule 25(1) can be assailed in a writ petition. The Court also came to the finding that Managing Committee has constituted a fresh Selection Committee without complying with the provision of the said Rule. As such His lordship was of the view that the writ Court can interfere.

10. The factual background of the two cusecs being totally different these two decisions have no application to the issues involved in the present case. For the reasons aforesaid this writ petition is dismissed on the preliminary point that the dispute raised in this petition cannot be canvassed before a writ Court. This Court, however, makes it clear that it has not at all gone into the merits of the controversy involved in this case. The parties are at liberty to agitate the grievances before the appropriate in an appropriate proceeding and in accordance with law.

11. There will be no order as to costs.