

## Rama Prosad Majumdar Vs State of West Bengal and Others

**Court:** Calcutta High Court

**Date of Decision:** Dec. 2, 1981

**Acts Referred:** Companies Act, 1956 " Section 237(b)

West Bengal Board Of Secondary Education Act, 1963 " Section 23(2), 28, 28(2), 29

**Citation:** 86 CWN 259

**Hon'ble Judges:** B.C. Roy, J

**Bench:** Single Bench

**Advocate:** B.N. Sen, B.B. Giri and J.K. Banerji, for the Appellant; A.P. Sircar and Suproakash Banerjee for the Board and R.N. Mitra and A.B. Chatterjee, for the Respondent

### Judgement

B.C. Roy, J.

These two writ application are at the instance of the petitioner who is working as Head Master of Salkia Hindu School. In

the Civil Rule No 916(W) of 1980 a challenge was thrown on the charge sheet dated 16th January 1980 which was served on the petitioner by

the Administrator of the school directing him to show cause against the said charges. The other application is directed against the order dated 14th

March, 1980 whereby the Secretary of West Bengal Board of Secondary Education intimated the administrator of the school that the

administrator of West Bengal Board of Secondary Education have approved the proposal of the administrator of the school for initiating

disciplinary proceedings against the petitioner The said application is also directed against the letter dated 5th of May, 1980 issued by the

Secretary of the West Bengal Board of Secondary Education intimating that the president of the Board accorded approval to the proposal of the

administrator of the School for removing the petitioner from the services of the school under Rule 28(8) of the Rules for management. The first

application whereon Civil Rule 916(W) of 1980 was issued on 13th of February, 1980 and an interim order was made to the extent that the

disciplinary proceedings may continue but no final order be passed without the leave of the court has now become infructuous inasmuch as the

administrator has already accorded approval to the proposal of the administrator of the school, the respondent no. 4, for removing the petitioner

horn the service of the school under Rule 28(8) for management of Recognised Non-Government Institutions (Aided and Unaided), 1969 subject

to the conditions that the services of the temporary Headmaster should not be terminated without the prior leave of this Hon"ble Court.

2. As regards the other writ-application the petitioner as stated hereinbefore challenged the validity of the order dated 3rd of May, 1980 passed

by the President of the West Bengal Board of Secondary Education according approval to the proposal of respondent no. 4 for removal of the

petitioner from his services as Headmaster of the School

3. The petitioner was appointed as an Assistant Teacher of the said school on August-25, 1947. On August 23, 1971 he was appointed as the

Headmaster of the School. On 4th of February, 1972, an Assistant Teacher, Madan Mohan pyne challenged the appointment of the petitioner as

Head Master and also the confirmation of the petitioner in the post of Head Master in Civil Rule No. 1438(W)/72 There was an interim order that

confirmation of the appointment of the petitioner as Head Master will abide by the result of the Rule. This Rule was heard and disposed of. It was

held that prayer "A" of the said writ petition challenging the confirmation of the appointment of the petitioner as Head Master of the school was not

maintainable in the writ court and other orders were made which are not relevant for our present purpose. On 30th of December, 1977, one Sri A.

K. Gupta who was formerly the District Inspector of Schools was appointed as Administrator of the school with all powers of the Managing

Committee and he was asked to review the appointment of the petitioner as Head Master. The Administrator took steps for reconstitution of the

Managing Committee by preparing and publishing the election programme fixing the date of election on May 21, 1978. On 27th of February,

1980, a letter was issued by the Secretary, West Bengal Board of Secondary Education directing the Administrator of the school not to hold the

election until the question of appointment of the petitioner as Head Master was reviewed and the Administrator was asked to intimate if the case

was reviewed or not. Another letter was sent by the Secretary, West Bengal Board of Secondary Education on 11th of June, 1978 directing the

Administrator not to proceed with the reconstitution of the Managing Committee till the case of the petitioner was reviewed On 27th of July, 1978,

the Administrator was changed and respondent no 4 was appointed as Administrator for 6 months with all powers of the Managing Committee

and all powers to reconstitute the Managing Committee within the term of his appointment. He was also directed to review the appointment of the

petitioner as Head Master and to submit a report. This term of the Administrator was extended by order dated 21st February, 1979 for a further

period of P months up to 26th of February, 1979. On 10th August, 1979, the Administrator, West Bengal Board of Secondary Education was re-

appointed by the President for a period of 6 months until further orders. On 13th August, 1979, the District Inspector of Schools, Secondary

Education, Howrah directed the Administrator, respondent no. 4, to pay the increments and special pay attached to the post of Head Master to

the petitioner. This is the short background of the case.

4. Mr. Bholanath Sen, learned counsel appearing on behalf of the petitioner, has made a three-fold submissions. The first dimension of Mr. Sen's

submission is that the power to accord approval by the West Bengal Board of Secondary Education, the respondent no. 6, as made on 3rd of

May, 1980, under Rule 28(8) of the Rules for management of Recognised Non-Government Institutions (Aided and Unaided), 1969 as amended

has not been properly exercised as it does not appear from the order itself that there was an emergency which necessitated the exercise of the

powers of the Board under Rule 28(8) by the President of the Board. The second dimension of Mr. Sen's argument is that the condition precedent

for exercise of these powers u/s 58(3) of the West Bengal Board of Secondary Education Act 1963 is totally absent and as such the order

impugned is wholly unwarranted and without jurisdiction. The third dimension of Mr. Sen's submission is that there has been no compliance with

the mandatory requirements as provided in section 28(2) of the said Act by not reporting to the Board the action taken by him in this case with

reasons for taking such action. Therefore the order impugned is wholly illegal and unwarranted and bad.

5. Mr. Sarkar, learned Advocate appearing on behalf of the West Bengal Board of Secondary Education, the respondent no. 5, has submitted that

the word "may" in Sub-section (2) of Section 28 of the said Act confers upon the President a discretion to exercise the powers of the Board if

there is an emergency. Whether there is an emergency or not for exercise of these powers it is the President alone who will decide and it is the

President who will decide if there is an emergency and whether he will exercise the powers of the Board u/s 28(2) of the Act. In this case the

President has, in his discretion thought fit to exercise the powers u/s 28(2) of the Act because in his opinion there is an emergency. The impugned

order, therefore, cannot be challenged as being illegal and unwarranted. It has been submitted in this connection by Mr. Sarkar that the powers of

the Board are co-terminus with that of the President. It was next submitted, by Mr. Sarkar that Section 28(2) provides that the President after

exercising the powers of the Board in an emergency has to report to the Board the action taken by him as soon as after the order has been made.

This does not mean that the order impugned has to be placed at the next meeting of the Board otherwise the order will be held illegal and bad. The

President may place the matter before the Board in any meeting of the Board. The impugned order cannot be attacked on the ground of its being

not placed in the next meeting of the Board. It has been lastly contended that the president has spelt the circumstances in the order which

constituted the emergency and the same could not be questioned before this Court.

6. The power to accord approval to the proposal made by the Administrator of the School, the respondent no. 4 for dismissing the petitioner from

service is conferred on the Board under Rule 28(8) of the said Rules. Section 23 (2) of the West Bengal Board of Secondary Education Act,

1963 provides that the President may, in an emergency, exercise any of the powers of the Board provided he shall not act contrary to the

decisions of the Board and shall as soon as thereafter as may be, report to the Board the action taken by him together with reasons therefor.

Therefore, the President can exercise the powers of the Board in the matter of accord of approval of the action proposed by the Administrator of

the School for taking disciplinary action provided he is satisfied that there is an emergency which requires him to exercise his powers u/s 28(2) of

the said Act. In this case if the order is scrutinised the reasons stated for exercise of the emergency power are as follows :

(a); It will take some time before the Board could sit for its deliberations.

(b) Formation of the Executive Council will, of necessity, also take sometime.

None of these reasons stated in the order dated 3rd May, 1980 does disclose any circumstance from which the President can come of the opinion

that there was an emergency.

7. In affidavit-in-opposition that has been filed on behalf of the respondent nos. 5 to 7 it has not been stated what are the circumstances on

consideration of which the President came of the opinion that there was an emergency which necessitated the exercise by him of the powers of the

Board u/s 28(2) of the said Act. It is now well settled that the exercise of discretionary powers is subject to judicial scrutiny. It has been observed

in O. Hood Philips Constitutional and Administrative Law (6th Edition) page 599 that a power, that is discretionary, i.e., not coupled with a duty is

abused or misused if it is exercised for an unauthorised purpose, if relevant considerations are disregarded or irrelevant considerations taken into

account. Even where a discretion seems unfettered the courts will interfere where it has been exercised in a way which thwarts or frustrates the

objects of the Act conferring the power." Similar observations have been made in S. A. De Smith's Judicial Review of Administrative Actions (4th

Edition) at page 339 : "If the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or

by the disregard of relevant considerations, a court will normally hold that the power has not been validly exercised." In H.R. Wade's

Administrative Law (4th Edition) page 375, it has been observed; "Subjective language as if the minister is satisfied as used in statutes refers to

subjective discretion of the Administrative authority and the court cannot judge objectively. But the discretion is to be exercised reasonably and in

good faith and upon proper grounds "The minister is of opinion", and it was held that court could quash the order of minister if the opinion is based

on no evidence or unreasonably or had gone wrong in law.

8. In the case of Barium Chemicals Ltd. vs. Company Law Board and others it has been observed by the Supreme Court that before the discretion

conferred by section 237(b) of the Companies Act, 1956, to order an investigation can be exercised, there must exist circumstances which in the

opinion of the Authority, suggest what has been set out in subclauses, (i) (ii) or (iii). If it is shown that the circumstances do not exist or that they are

such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of

non-application or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute." The same view

has been reiterated in Rohtas Industries Vs. S.D. Agarwal and Others, at page 710 and Avinder Singh and Others Vs. State of Punjab and

Others, . The power to accord approval to proposal for taking disciplinary action against a teacher made by the Managing Committee or the

Administrator is vested in the West Bengal Board of Secondary Education and this power of the Board may be exercised by the President only in

an emergency as provided in Section 28(2) of the Act. It is not a routine procedure intended by the Legislature as observed by A. K. Sen, J. in C.

R. No. 562S(w) of 1972 Sarat Chandra Maity vs. The President of W. B. Board of Secondary Education decided on 25.9.73. This has been

followed in (1976) 2 CLJ 289 Sachi Nath Ghose vs. W. B. Board of Secondary Education.

9. In the light of the decisions and observations quoted hereinbefore to exercise the power u/s 28(2) which is vested in the Board under Rule 28(S)

of the said Rules by the President by virtue of the provisions of the section 28(2) of the said Act it is incumbent on the President to consider the

relevant and germane circumstances wherefrom he formed his opinion that an emergency exists which necessitates the exercise by him of the

powers of the Board. In this case the reasons that have been stated for coming to the opinion that there is an emergency are, in my opinion, do not

constitute relevant circumstances for formation of such an opinion. The West Bengal Board of Secondary Education as evident from the order of

the President dated 3rd May, 1980, was re-established with effect from 14th March, 1980 and the first meeting of the Board was convened under

order of the President on 28th of July, 1980 and the Second Meeting of the Board was held on 29th of July, 1980. Therefore, it cannot be said that

the matter regarding approval of the proposed action of the respondent no. 4 could not be placed before the West Bengal Board of Secondary

Education and there is nothing to show that there is such an emergency which requires immediate exercise of power under Rule 28(8) by the

President u/s 28(2) of the said Act. No affidavit has been filed stating the circumstances which impelled the President to form an opinion that an

emergency had arisen and the power of the Board was required to be exercised by him u/s 28(2) of the said Act. In my opinion, formation of

opinion about emergency was made on irrelevant considerations and on a disregard of relevant considerations and as such the condition precedent

to form the opinion about the existence of emergency is totally absent. In such circumstance, I am constrained to hold that it never existed and as such the

impugned order made by the President is wholly ultra vires, illegal and the power had not been validly exercised.

10. The argument advanced by Mr Sarkar, learned Advocate appearing on behalf of the respondent no. 5, that it is a discretionary power and the

President is the sole authority to determine whether there is an emergency which necessitates the exercise of the power of the Board by him or not

is devoid of any merit as the opinion is to be formed on a consideration of relevant circumstances and whether the conditions precedent, or in

other words, the relevant circumstances were considered or not is justiciable. The next question requires to be considered is that whether the

President of the Board is to report to the Board the action taken by him together with the reasons therefore in the next meeting of the Board as

provided in section 28(2) of the Act. There is no doubt that the President by exercising the power of the Board in an emergency has to comply

with the mandatory requirements of the provisions of the aforesaid section which enjoins that he shall have to report to the Board about the action

taken as soon as thereafter. This is because the Board in which the power is vested is the ultimate authority to decide at its meeting whether the

action taken by the President by exercising the power of the Board u/s 28(2) of the said Act will be approved by the Board or not. If the Board

does not approve of the action of the President then the order made by the President will be set aside and it will be ineffective as evident from sub-

section (2) of Section 28 which clearly specifies that the President "shall not act contrary to any decision of the Board". Therefore any action taken

and or any order made u/s 28(2) of the said Act is required to be placed as early as possible before the meeting of the Board for its consideration

and approval. In this case as has been contended by Mr. Sen that though the impugned order has been made by the President on 3rd May, 1980

yet the President did not report this matter to the meeting of the Board held on 28th July, 1980 as well as on 29th of July, 1980 as evident from the

notices of the aforesaid meetings annexed as annexures "Y" and "Z" to the writ petition. It has been stated in paragraph 30 of the affidavit in

opposition that there are many other urgent matters which were required to be disposed of by the Board at a meeting and in view of the shortage

of time in the meeting of the Board the matter relating to the said order dated May 3, 1980 could not be placed at the meeting of the Board. It has

also been stated that the matter relating to the said order of the President could not be reported to the Board at the two meetings-in-question

referred to In paragraph 40 of the said petition. It has also been stated by Mr. Sarkar on a query by this Court that no other meeting of the Board

has been held since its re-establishment on March, 1980. Therefore the mandatory provisions of section 28(2) which enjoins on the President to

report to the Board the order made by him by invoking his emergency powers u/s 28(2) in respect of matter which the Board is empowered under

the Rule to decide whether the approval would be accorded or not has not been complied with. Under, section 29 of the said Act it is the

President who will convene the meetings of the Board and shall give to each member of the Board notices of the meetings. Therefore, this action

on the part of the President in not placing the impugned order made by him in the meeting of the Board with the reasons for exercising the powers

of the Board renders the impugned order invalid and inoperative. It is well settled that statutory powers are to be exercised in the manner and

mode provided in the statute and as there has been non-compliance with the mandatory provisions of the section 28(2) of the Act, the impugned

order, in my opinion, cannot be sustained.

In the premises aforesaid the contentions, raised on behalf of the petitioner having succeeded the Rule succeeds. The Rule is made absolute. Let a

writ of Mandamus be issued commanding the respondents to for-bear from giving the effect to the impugned order dated 3rd May, 1980 made by

the President, West Bengal Board of Secondary Education. Let a writ of Certiorari be issued commanding the respondents to quash and set aside

the impugned order dated 3rd May 1980 according approval under Rule 28(3) of the Rules for Management for Recognised Nongovernment

Institutions (Aided and Unaided), 1969 to the proposal of the Administrator, respondent no. 4 removing the petitioner from his service as Head

Master of the School. There will be no order as to costs.

This will not, however, prevent the authorities concerned from proceeding in accordance with law.