

**(1980) 07 CAL CK 0028**

**Calcutta High Court**

**Case No:** None

In Re: Chittaranjan Das

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** July 7, 1980

**Acts Referred:**

- West Bengal Council Of Higher Secondary Education Act, 1975 - Section 21

**Citation:** 84 CWN 723

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

**Bench:** Single Bench

**Advocate:** H. Chakraborty, for the Appellant; H.N. Halder for the State and Biman Kanti Basu, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

B.C. Roy, J.

In this Writ petition the subject-matter of challenge in two letters issued by the Secretary, M.R. Biswas (respondent No. 9) requesting the petitioner to hand over charge of the office of the Secretary to him as he has been elected as secretary of the school. These two letters are dated 29.4.80 and 2.5.80. These two letters have been assailed before this Court by Mr. Chakraborty on the ground that though the petitioner's ward appeared in the School Final Examination yet rule 30 of the rules laying down procedure for election of managing Committee of non-government institutions (aided and unaided) does not apply to this case on the ground, inter alia, that this school imparts instructions not only upto Secondary standard but also upto Higher Secondary standard and the son of the petitioner who duly passed the Secondary examination from this school had not left the school but has been continuing his studies in the higher secondary section of this school and secondly, the rules and regulations framed by the West Bengal Council of Higher Secondary Education under sub-section (3) read with clause (d) of sub-section (2) of section 21 of the West Bengal Council of Higher Secondary Education Act, 1975 clearly provides

in regulation 4 sub-regulation 7 that a secondary institution shall have a managing committee constituted in accordance with the rules and orders issued by the State Government.

2. It has been urged by Mr. Chakraborty referring to paragraph 1 of the Circular dated 10.8.76 that so long as rules are not framed laying down the procedure for constitution of the managing committee of higher secondary institutions, ad hoc managing committee will be formed in accordance with the mode prescribed in paragraph 1 of the Circular dated 10.8.76 and the petitioner being the secretary of the managing committee of the school is entitled to act as secretary of the managing committee of the higher secondary school. It has therefore been urged that the secretary cannot be treated as having ceased to be in the office of the secretary as his ward is no longer a student of the secondary school. It has been therefore submitted in the petition that the letters which were issued by the newly elected secretary of the managing committee asking the petitioner to hand over the charge of office of the secretary is wholly illegal and unwarranted. This application was moved on 13.6.80 and on that day the petitioner was directed to serve copies of the application on respondents nos. 3, 5 and 6 and an interim order of maintaining status quo ES on that day for two weeks was granted. An affidavit-in-opposition has been filed by Mr. Basu appearing on behalf of respondents no. 6 to 10, 12, 13, 15 and 16. It has been specifically averred in paragraph 4 of the affidavit-in-opposition that the petitioner was the secretary of the school and thereafter on and from 26.4.80 the respondent no. 9 was duly elected to be the secretary of the school and he has been functioning in that capacity upto today. In paragraph 13 it has been averred that the newly elected secretary, (respondent no. 3) is operating all the accounts of the school jointly with respondent no. 8 since 20.5.80. The respondent no. 9 sanctioned a loan of Rs. 500/- to Shri Sushil Kumar Das, an Assistant Teacher of the school, from his Provident Fund Account and the bank transaction was made on 2.6.80 and respondent no. 9 also issued several letters to respondent no. 5 in connection with different problems of the school, It has been thus stated that the respondent no. 9 has been duly functioning as secretary of the managing committee of the school and the petitioner is no longer acting as secretary of the school, The allegation made in the affidavit-in-opposition are not admitted by the petitioner.

3. Mr. Chakraborty, learned Advocate appearing in support of the petition, has firstly contended that rule 30 of the rules laying down procedure for holding election of members for the purpose of constitution or reconstitution of the managing committee of non-government institutions which provides that a guardian father will cease to have the qualification of a guardian father as soon as his ward leaves the school does not apply to this case as according to Mr. Chakraborty though the ward of the petitioner appeared in the final secondary examination from this school yet the ward after passing such examination has been continuing his studies in the higher secondary branch of the school and as such the petitioner is entitled to

remain as secretary of the managing committee of the school. In support of this submission Mr. Chakraborty has also relied on regulation and circulars framed by the West Bengal Council of Higher Secondary Education providing the manner of constitution of the managing committee of the higher secondary institutions. Mr. Chakraborty relied on paragraph 1 of the circular dated 10.8.76 and contended that as no rules have been framed by the Council providing for the constitution of the managing committee of higher secondary schools or colleges imparting instructions in higher secondary courses the petitioner who is the secretary of the managing committee of the school is entitled to act as secretary of the adhoc managing committee of the school. So the respondent no. 9 who has been elected as secretary of the managing committee of the school is not entitled to act as such.

4. In deciding this question it is pertinent to refer to section 2(c) of the Act (West Bengal Act V of 1963). "Institution" has been defined as a high school or higher secondary school or an educational institution or part or department of such school or institution imparting instruction in secondary education. Thus from section 2(c) it is clear that it means an institution imparting instruction in secondary education and obviously not in higher secondary education. This being the position, rule 30 of the rules which I have mentioned before clearly applies to this particular case and it is evident from the statements made in annexure D to the writ petition that the ward of the petitioner appeared in the Madhyamik Examination from this school. Therefore, in my opinion, under the provisions of rule 30 the petitioner whose ward has already appeared in the Madhyamik Examination from the school and as stated by the learned Advocate for the petitioner that the ward after passing the Madhyamik Examination has been reading in the higher secondary section of the said school is no longer a student of the secondary branch of this institution and as such the petitioner loses his qualification as a guardian from which constituency he was elected as secretary of the managing committee of the school. This position becomes more clear from rule 11 of the rules for management of recognised non-government, institutions (aided and unaided) 1969 which also clearly provides that if any member of the committee ceases at any time to fulfil the qualifications in respect of which he was elected or nominated, he shall cease to be a member and a vacancy shall be automatically created which shall be filled by co-option or nomination, as the case may be, as provided in these rules.

5. For the reasons aforesaid the contentions advanced by the learned Advocate for the petitioner fail and the petition also fails.

The application is, therefore dismissed. There will, however, be no order as to costs.

The operation of this order is stayed for the period of ten days but I make it clear that this will not prevent the respondents nos. 8 and 9 from operating the bank account for meeting the day to day expenses as well as payment of emoluments of the teaching and non-teaching staff of the school.