

(2004) 09 CAL CK 0057

Calcutta High Court

Case No: Writ Petition No"s. 19766 (W) of 2003 and 3299 (W) of 2004

Amit Das

APPELLANT

Vs

The Chinsurah Balika Siksha
Mandir and Another

RESPONDENT

Date of Decision: Sept. 20, 2004

Acts Referred:

- West Bengal Board of Secondary Education Act, 1963 - Section 18, 19A, 19A(3), 19A(4), 27

Citation: (2005) 1 CALLT 619

Hon'ble Judges: Pratap Kumar Ray, J

Bench: Single Bench

Advocate: K.N. Roy, in W.P. No. 3299W of 2004 and added respondent except Keya Adhikary, Kallol Basu, in W.P. No. 19766W of 2003, Swapan Banerjee and Srilekha Bhattacharya, Tulsidas Maity, in W.P. No. 19766W of 2003, for the appearing parties;

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.

Both the writ applications are taken up for judgment.

2. In both the two writ applications the petitioners are the guardian members and they have locus standi to say about the reconstruction of the Managing Committee of the school. The election for reconstitution of the Managing Committee of the school as held on 18.1.2004 and 16.11.2003 is the subject matter of the challenge in these writ applications on the ground that the Managing Committee, who completed the election process has no jurisdiction to complete such, for the sole reason that the life of such Managing Committee expired on 8.7.2003, but on the strength of the general Order issued by the West Bengal Board of Secondary Education extending life of Managing Committee, the committee exercised purportedly their power to function and accordingly completed the election process.

Hence, the moot question for adjudication of the writ application is as to whether the West Bengal Board of Secondary Education can pass a general Order extending the life of the Managing Committee which has already completed its three years tenure in terms of the Rule of Management of Recognised Non-Government Institution (Aided and Unaided) Rules, 1969. For effective adjudication of this case the power and jurisdiction of the Board constituted under the West Bengal Board of Secondary Education Act, the power of the Executive Committee of the said Board and the power to extend the life of the Managing Committee all are required to be considered.

Section 4 of the said Act has defined the composition of the Board consisting of members as mentioned thereto. Section 4 reads thus:

"4. Composition of the Board.--The Board shall consist of the following members:-

- (1) The President;
- (2) The President of the West Bengal Council of Secondary Education, ex-officio;
- (3) The Director of School Education, Government of West Bengal, ex-officio;
- (4) Omitted.
- (5) The Director of Technical Education, Government of West Bengal, ex-officio;
- (6) The Deputy Director of Secondary Education (for women). Government of West Bengal, ex-officio;
- (7) The Deputy Director of Secondary Education (1), Government of West Bengal, ex-officio;
- (8) Two persons elected in the manner prescribed from amongst the teaching staff of training Colleges for teachers of Secondary Schools affiliated to or recognised by any of the Universities in West Bengal;
- (9) The Dean of the Faculty of Arts and the Dean of the Faculty of Science of the Calcutta University, ex-officio;
- (10) The Dean of the Faculty of Engineering and Technology, Jadavpur University, ex-officio;
- (11) The Adhyaksha, Kala Bhavan, Viswa Bharati, Santiniketan, ex-officio;
- (12) A Dean nominated by each of the Universities of Burdwan, Kalyani and North Bench and the Bidhan Chandra Krishi Viswa Vidyalaya;
- (13) One person nominated by the Madrasha Education Board from amongst the members of Madrasha Education Board;
- (14) (a) Two heads of recognised Secondary Schools nominated by the State Government;

(b) Thirty-four whole-time and permanent teachers of recognised Secondary Schools whose appointment has been approved in accordance with the rules and of whom one shall be from the hill areas, elected in the manner prescribed."

3. The powers and duties of the aforesaid Board have been stipulated under Chapter IV of the said Act, and more particularly u/s 27 of the said Act, which reads thus:

"27. Powers and duties of the Board. - (1) It shall be the duty of the Board to advise the State Government on all matters relating to Secondary Education referred to it by State Government.

(2) Subject to any general or special orders of the State Government, the provisions of this Act and any rules made thereunder, the Board shall have generally the power to direct, supervise and control Secondary Education, and in particular the power--

(a) to lay down the general policy for development of Secondary Education in West Bengal;

(b) to conduct periodical survey to assess the educational needs of West Bengal with particular reference to such needs of the Scheduled Castes, the Scheduled Tribes and other backward communities and of the hill areas in West Bengal;

(c) omitted;

(d) to institute Secondary Examinations and such other examinations as it may think fit and to make regulations in this behalf;

(e) to administer the West Bengal Board of Secondary Education Fund;

(f) to institute and administer such Provident Funds as may be prescribed;

(g) to make regulations relating to the conduct, discipline and appeal in respect of the members of its staff;

(h) to decide any appeal preferred against any decision of the Executive Committee or, subject to the provisions of this Act, any other Committee constituted under this Act; and

(i) to award diplomas, certificates, prizes and scholarships in respect of any examinations instituted by the Board.

(3) Subject to the provisions of Sub-section (2), the Board may, If it thinks necessary, make regulations in respect of any matter for the proper exercise of its powers under this Act :

Provided that any decision or action taken or any Order made by the Board in exercise of its power under this Act shall not be invalid merely on the ground that no regulation has been made under this sub-section.

(4) No regulation shall be valid unless it is approved by the State Government and the State Government may, in according such approval, make such additions, alterations and modifications therein as it thinks fit and also specify the date or dates from which the regulations shall come into force or shall be deemed to have come into force;

Provided that before making any such addition, alteration or modification the State Government shall give the Board an opportunity to express its views thereon within such period not exceeding one month as may be specified by the State Government.

(5) All regulations approved by the State Government shall be published in the official Gazette.

(6) Subject to the provisions of Sub-sections (2) and (3), the Board shall have the power to require the Executive Committee, from time to time, to submit reports, returns, statements and other information on any matter relating to the duties of the Executive Committee referred to in Sub-sections (3) and (4) of Section 19A."

4. u/s 18 of the said Act, the Board has been empowered to constitute different committees, namely, recognition committee, executive committee etc. Functions of different committees have also been stipulated in the said Act. For adjudication of this case, function of the executive committee is required to be considered which has been stipulated u/s 19A of the said Act which reads thus:

"19A. Executive Committee. - The Executive Committee shall consist of the following members :-

(a) the President;

(aa) the President, West Bengal Council of Higher Secondary Education, ex-officio;

(b) the Director of School Education, Government of West Bengal, ex-officio;

(c) Omitted;

(d) the Deputy Director of Secondary Education (1) Government of West Bengal, ex-officio;

(e) the Deputy Director of Secondary Education (for women), Government of West Bengal, ex-officio;

(f) five persons elected by the Board in the manner provided by regulations from amongst the members referred to in clauses (8), (9), (10), (11) and (12) of Section 4;

(g) five persons elected by the Board in the manner provided by regulations from amongst the members referred to in Clause (14) of Section 4;

(h) one person elected by the Board in the manner provided by regulations from amongst the members referred to in Clause (15) of Section 4;

(i) two persons elected by the Board in the manner provided by regulations from amongst the members referred to in Clause (16) and Clause (18) of Section 4;

(j) member referred to in Clause (17) of Section 4;

(2) The President shall be the Chairman of the Executive Committee and the Secretary to the Board shall be the Secretary to the said Committee.

(3) Subject to any general or special orders of the State Government, the provisions of this Act and any rules or regulations made thereunder, the Executive Committee shall have the power to--

(a) advise the Board on all matters relating to development of Secondary Education;

(b) take such steps as may be necessary to carry out, as directed by the Board, the policy in accordance with the provisions of this Act.

(c) Subject to any directions of the State Government in regard to the number, location and manner of selection -

(i) grant or refuse recognition to Institution and

(ii) withdraw recognitions granted to Institutions, and after considering the recommendation of the Recognition Committee

(d) (i) amalgamate two or more Institutions into one Institution,

(ii) split one Institution into two or more Institutions, and

(iii) shift an Institution from one site to another;

(e) (i) supervise the functions of the Managing Committee,

(ii) approve or withhold approval of the constitutions of the Managing Committees,

(iii) approve special constitution of the Managing Committee;

(iv) supersede a Managing Committee and appoint Administrator or ad hoc committee to manage the affairs of an Institution;

(f) maintain a register of recognised Institutions;

(g) provide, after considering the recommendations, if any, of the Syllabus Committee, the syllabus, the courses of studies to be followed and the books to be studied in recognised Institutions and for examinations Instituted by the Board;

(h) undertake, if necessary, with the approval of the State Government, the preparation, publication or sale of text books and other books for use in recognised Institutions;

(i) (a) approve or prescribe books either for being studied in recognised Institutions or for examinations instituted by the Board or for both; and

(b) publish list of books so approved or prescribed and revise such list from time to time;

(j) set down the conditions to be fulfilled by candidates presenting themselves for examinations instituted by the Board;

(k) provide, after considering the recommendations, if any, of the Examinations Committee and the Regional Councils and with the approval of the State Government, the rates of remuneration to be paid to paper-setters, moderators, tabulator examiners, invigilators, supervisors and other persons employed in connection with the examinations instituted by the Board and the rates of fees to be paid by candidates for such examinations;

(1) (i) grant permission to candidates to appear at the examinations Instituted by the Board, and

(ii) refuse or withdraw such permission, if it thinks fit, stating the reasons of such refusal or withdrawal,

(4) The Executive Committee shall submit to the Board half yearly reports on the action taken by it on matters specified in this Section and such other reports, returns, statements and information on any matter relating to the duties of the Executive Committee as the Board may require from time to time. (5) The Executive Committee may, if it thinks necessary, make by-laws, not inconsistent with this Act or the rules or the regulations made thereunder, for discharging its functions under this Act.

Provided that any decision or action taken or any Order made by the Executive Committee in the discharge of its functions under this Act shall not be invalid merely on the ground that no by-law has been made under this sub-section.

(6) No by-law shall be valid unless it is approved by the State Government. The Executive Committee shall submit by-law to the Board and the Board shall examine the same and submit the bylaw to the State Government with its report. The State Government, after considering the report of the Board, may approve the by-law and, if necessary, make such additions, alterations or modifications as it thinks fit.

(7) All by-laws approved by the State Government shall be published in the Official Gazette."

5. u/s 45 of the said Act the State Government has been empowered to make rules for carrying out the purposes of the said Act. Sub-section (2)(d) of Section 45 relates to the power of the State Government to frame Rule so far as the composition, powers and functions of Managing Committees of Institutions.

6. On exercise of the power under the aforesaid Section 45, the State Government issued a Rule, under the name and style of Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 (hereinafter referred

to as the said Rules) detailing different procedures and regulations for reconstitution approval and supersession of Managing Committee and/or appointment of Administrator and/or ad hoc committee and other matters. For this case," relevant rule, namely Rule 8 and Rule 12 would be necessary to the dealt with which are as follows:

"8. Power of Executive Committee to approve and supersede committee, to appoint Administrator or Ad-hoc Committee shall have the power to supersede a committee that has, in its opinion, not been functioning properly and to appoint an Administrator or an Ad-hoc Committee to exercise the power and perform the functions of the committee.

Provided that before superseding a committee under this Rule the Executive Committee shall have due regard to the report of the Director and shall afford a reasonable opportunity to the Committee to present its case before the Executive Committee.

(1a) The Executive Committee shall have also power to appoint an Administrator or Ad-hoc Committee in respect of any Institution share the term of the committee has expired, but the committee has not been reconstituted for any reason whatsoever.

(2) An Administrator or an Ad-hoc Committee appointed under Sub-rule (1) or Sub-rule (1a), shall exercise the power and perform the functions of the superseded committee or of the committee whose term has expired, as the case may be, ordinarily for one year and the Executive Committee may, by order, extend, in special circumstances, the term of office of the Administrator or the Ad-hoc Committee, as the case may be, by a further period, not exceeding six months at a time so, however, that the total period shall not exceed two years and the Administrator or the Adhoc Committee, as the case may be, shall take steps to reconstitute the committee under these rules before the expiry of the term of office of the Administrator or the Ad-hoc Committee, as the case may be. In exceptional circumstances which are beyond the control of the Administrator or the Adhoc-Committee, the term may, on the application of the Administrator or the Ad-hoc Committee, be extended by the Executive Committee for such period as the Executive Committee deems fit,

(3) Notwithstanding anything contained in these rules, the Executive Committee shall have the power to approve, on the application of any Institution or class of Institutions, of the special constitution of a committee in favour of such Institution or class of Institutions and in approving the special Constitution of a committee, the Executive Committee shall pay due regard to the recommendations of the Director, if any. While granting special constitution in favour of an Institution or a class of Institutions, the Executive Committee shall ensure that representation of the members of the teaching and the non-teaching staff, guardians and the member nominated by the Director or an officer authorised by him in this behalf, is made

according to Clause (iii), Clause (v) and Clause (vi) of Rule 6;

Provided that if the Executive Committee is of opinion that a school enjoying suit property constitution has not been functioning properly, the Executive Committee may, after paying due regard to the recommendations of the Director, if any, amend or withdraw such special constitution of a committee and in that event, the Executive Committee may, as the case may be, to exercise the powers and perform the functions of the committee for such period as may be specified in the order.

(4) The constitution of a committee shall be forwarded to the Executive Committee through the Director whose observations thereon shall be considered by the Executive Committee before the Executive Committee approves of the committee".

"12. Term of committee. - Subject to the approval of the committee by the Executive Committee, the term of the committee shall be three years from the date on which its constitution or reconstitution is completed by the election of the office bearers and nomination by the Director or from the date of expiry of the term of the previous committee whichever is later:

Provided that such term may be extended by the Executive Committee for sufficient reasons, by a period not exceeding one year. In exceptional circumstances, where, in the opinion of the Executive Committee, the committee cannot be constituted or reconstituted within the period of such extension, the Executive Committee may extend such period further so, however, that the total period shall not exceed two years ;

Provided further that if the committee is not constituted or reconstituted within the extended term of the committee, the Executive Committee, shall take such action as it deems fit."

7. The procedure for holding election for the purpose of constitution or reconstitution of Managing Committee of Non-Government Institutions (Aided and Unaided) in reference to Rule 9 read with Rules 6 and 6A of the aforesaid Rule was framed and constituted by the West Bengal Board of Secondary Education on publishing the same in Calcutta Gazette. Under the said procedure Clause 31 provides life span of a member of Managing Committee, which reads thus :

"31. Unless there is specific approval from the Executive Committee of the Board extending the statutory term of a committee, every member of such committee shall have to vacate on the expiry of its usual term of three years."

8. Learned advocate for the petitioners in this case has raised a question which is of great importance about the power and jurisdiction of the said Board to extend the life of any Managing Committee by issuing a general circular letter. It has been contended that the said Board had no power and jurisdiction to extend life of any Managing Committee even on consideration of specific cases of any school, far less by a general order. It is contended that the power to extend the life of a Managing

Committee which is statutorily fixed as 3 years, can be extended to a maximum period of 2 years under special exigency and assignment of reason by the Executive Committee of the said Board and the Executive Committee of the Board also has no power vested under the statute to extend life of any Managing Committee by general Order issuing a circular letter to that effect. It has been contended that exercise of power in the instant case extending life of the Managing Committee by the Board is nothing but a fraud on the statute.

9. This application has been opposed by the West Bengal Board of Secondary Education by contending, inter alia, that though the Executive Committee was vested with the power to deal with function and supervision of the Managing Committee of the school, but the Board retained its power to take any decision with reference to Managing Committee of any school. Both parties have advanced argument at length by referring to different statutory provisions. Having regard to the statutory provisions and having regard to the arguments as advanced, now the points are considered on interpreting the statutory provisions. u/s 19A of the said Act, it is the Executive Committee which is vested with the power under Sub-section (3) Clause (c) (i) to supervise the function of the Managing Committee and under Clause (ii) to approve or withhold approval of Constitution of Managing Committee, Rule 8 of the said Rules has specifically empowered the Executive Committee to approve and supersede the committee, to appoint Administrator or Ad-hoc Committee and/or to grant constitution. Under Rule 12, term of the committee has been defined which by using the word "shall" provided that such tenure of the committee as 3 years only. A proviso has been added, which speaks that extension of such term beyond 3 years could be made by the Executive Committee for sufficient reasons by a period not exceeding one year and in exceptional circumstances where the committee cannot be constituted or reconstituted within the period of aforesaid extension, the Executive Committee got the power to extend life of the committee not exceeding 2 years in total. On a bare reading of the term of the committee, accordingly it appears that the legislature at their wisdom vested the power to extend the life of a Managing Committee after completion of 3 years normal tenure to the Executive Committee of the said Board subject to certain conditions as stipulated thereto. The Executive Committee got the power to extend the life for a further period of one year only but to expand the life of the Managing Committee for further 2 years, it requires a special contingency, namely, that the Managing Committee could not complete election for reconstitution within the normal and/ or first extended tenure of the life of the Managing Committee. On a bare reading of the said provision it appears that the legislature wanted that an elected body will function in the management of the school and accordingly the Executive Committee was vested with limited power of extension. In a nutshell, the Executive Committee was vested with the power to decide each case to case issue of different Managing Committee. Even under Rule 12 of the said Rules, the Executive Committee was not vested with any general power to extend the life of all the

Managing Committee, wherever they are functioning in the State to extend the life. Under Clause 31 of the procedure for holding Election, Members of the Managing Committee are required to vacate their position after expiry of the usual period of 3 years. From the power of the Board as stipulated u/s 27, nowhere it appears that the said Board got the power to supervise function of the Managing Committee as is vested u/s 19A(e)(i) to the Executive Committee. Once under a statute the Board constituted Executive Committee, and such Executive Committee was vested with the power to supervise the functions of the Managing Committee and once the said Rule was constituted and framed by the State Government on exercise of the power u/s 45 of the said Act, nobody who ever may be under the statute if is not empowered to deal with anything has the right and jurisdiction to deal with the matter. It is the basic principle of statutory interpretation and limitation of the power of statutory body that a statutory body must act in terms of the statute. An individual can do whatever he likes save and except as are not prohibited by law but a statutory body must act in terms of the statute as has been explicitly provided in the statute itself. This principle is now settled having a deep root in the ground of judicial field. Reliance may be placed to the judgment passed in the case *Moniruddin Byapari v. The Chairman, Municipal Commission, Dacca*, reported in 40 CWN 17 , [Municipal Corporation Vs. Sri Niyamatullah](#), , [Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others](#), , [J.N. Ganatra Vs. Morvi Municipality, Morvi](#), and [Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others](#), . In this respect, a passage from the book "The Construction of Statutes" by Earl T. Crawford is much relevant. Relevant portion in the said book at page 334 under Article 195, 1940 publication, reads thus ;

"195. Express Mention and Implied Exclusion (*Expressia Unius Est Exclusio Alterius*. - ... If a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect.

... if the statute directs that certain acts shall be done in a specified manner, or by certain, person, their performance in any other manner than that specified, or by any other person than one of those named, is impliedly prohibited."

10. Having regard to such legal position, now the point to be decided as to whether the West Bengal Board of Secondary Education got any power under the statute explicitly or impliedly to pass any general Order extending the life of Managing Committee by expanding its tenure more than 3 years. As already discussed, the said Board got no power, but the entire power to extend the life of Managing Committee after expiry of the normal 3 years period and that too with a limitation of maximum 2 years more and subject to special reason relating to that school, was vested to the Executive Committee of the said Board. West Bengal Board of Secondary Education and the Executive Committee of the said Board are of completely different bodies having different identity under the statute, namely, West Bengal, Board of Secondary Education Act, 1963. Management Rules as

framed in exercise of the power u/s 45 of the said Act, also never vested any power to the said Board to pass any general Order and/or notification extending the life of different Managing Committees. Furthermore, it appears that the Executive Committee though has been given power to extend the life after normal period is exhausted, but such power was not unlimited or indefinite or unchannelised. Such exercise of power also was coupled with subjective satisfaction of sufficient reasons as would be assigned by respective Managing Committee and acceptance of such as valid and justified to extend life of Managing Committee. The jurisprudential concept to provide such limited power about extension of life of Managing Committee under said proviso has a firm root to establish democratic governance of school management by an elected body namely the guardians representations and teaching representations by holding regular election for such reconstitution under certain intervals.

11. Hence, it appears from Rule 12 of the said Rules, which is the only provision to extend the tenure of the life of Managing Committee that individual cases of individual Managing Committee are required to be dealt with by the Executive Committee to extend the normal tenure on considering variant reasons as would be assigned and there is no scope even before the Executive Committee to pass any general Order by a notification or an executive circular extending the life of different Managing Committees of different schools giving a go by of said statutory provision of Rule 12, which mandates that under exceptional circumstances as to be reported by individual Managing Committee, the power to be exercised.

12. Hence, it is the positive finding of this Court that West Bengal Board of Secondary Education has no power or jurisdiction to extend the life or tenure of any Managing Committee extending the normal tenure of 3 years even by entertaining any application from the Managing Committee itself, which could be done by the Managing Committee under Rule 12 of the said Rule seeking such extension to the Executive Committee. In this case, it appears that a circular letter was issued by the West Bengal Board of Secondary Education dated 9.4.2003, which is annexed as annexure "P-4" by which life of different Managing Committee were extended to 31.12.2003 which period has subsequently extended again by Executive Committee upto 29.2.2004 by circular dated 26.8.2003 annexed as "P-5". Being infected with further life by the said manner, the present Managing Committee continued to function. Since the said Board as well as Executive Committee had no power and Jurisdiction to extend the life of any Managing Committee by any general order, exercise of the power by the said Board as well as Executive Committee was nothing but a fraud on the statute due to absolute breach of Rule 12 and proviso.

13. The said Board being a statutory body is required to perform its function within the framework of the statute. It can neither exceed its statutory power nor can limit its jurisdiction and power. Similar embargo was with the Executive Committee. It is the basic fundamental Rule of statutory interpretation.

14. Having regard to such, accordingly this Court holds that the circular letter dated 9.4.2003 issued by the West Bengal Board of Secondary Education and circular letter of 26.8.2003 issued by Executive Committee of the Board is de-hors of the statutory provision and accordingly it is set aside and quashed. As a consequence thereof, the life of the Managing Committee, which already completed 3 years period on 15.5.2003, got no authority to exercise their power further and thereby was statutorily debarred to hold election of the Managing Committee for reconstitution. Hence, as a consequence thereof, the election as held on 18.1.2004 and 16.11.2003 in respect of two types of representatives namely guardians and teachers are without jurisdiction, and hence it is set aside and quashed.

However, this Court is not unmindful of the fact before parting with the writ application that there would be a vacuum in the administration of the school in view of quashing of the elected body due to cancellation of the entire election which now has been ordered. Hence, it is directed that the members of the present Managing Committee who are elected in pursuance of the election process as completed by the erstwhile Managing Committee who had no power and jurisdiction to hold the election after expiry of their normal tenure and in absence of extension of their life by the Executive Committee exercising power under Rule 12 of said Rule are directed to vacate their post forthwith. The District Inspector of Schools concerned is directed to appoint one of his officers as Special Officer, who will run the day to day administration of the school. The said Special Officer will complete the election for reconstitution of the Managing Committee following the Management Rules, 1969, within 3 months from this date positively and will hand over charge to the newly elected body.

Both the writ applications are accordingly allowed.

Leave is granted to the learned advocates of the parties to communicate the gist of the order.

Urgent xerox certified copy of the order, if applied for, be supplied expeditiously.