

Administrator, West Bengal Board of Secondary Education and Others Vs Abinash Chandra Bhadra and Others

Court: Calcutta High Court

Date of Decision: June 1, 1982

Acts Referred: Constitution of India, 1950 " Article 14, 226

Hon'ble Judges: M.M. Dutt, J; M.K. Mukherjee, J

Bench: Division Bench

Advocate: A.P. Chatterjee and A.N. Choudhury, for the Appellant; Saktinath Mookerjee and Madhusudan Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Dutt, J.

This appeal has been preferred by the State of West Bengal and three others against the judgment of B. C. Ray, J. dated

January 11, 1982, whereby the learned Judge made absolute the Rule Nisi issued on the application of the respondents Under Article 226 of the

Constitution. The respondents, who were the writ petitioners, are the members of the Managing Committee of Udavan Institution for Girls, situate

at 16. Gomes Lane, Calcutta. It is the case of the respondents that the said school was founded by the respondent no. 4. Shri Parbati Charan Sen

Gupta. The school was recognised as a class X school by the West Bengal Board of Secondary Education, hereinafter referred to as the Board, in

the year 1965. The recognition was extended from time to time. After the special constitution of the Managing Committee of the school was

approved by the Board, the Managing Committee of the school was constituted on July 2, 1967 with the respondents as the members thereof.

After the Management of the Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 was framed, hereinafter referred to as

the said Rules the school made an application on September 22, 1969 for the approval of the special constitution of the Managing Committee of

the school under Rule 8(2) of the said Rules. It appears that the Board allowed the Managing Committee to continue until further direction or

decision of the Board. On September 23, 1969 the Director of Public Instruction, West Bengal, recommended the approval of the special

constitution of the school. Thereafter, an inspection of the school was held by the District Inspector of Schools, and he submitted report. On such

report, the Director of Public Instruction withdrew his recommendation. for the approval of the special constitution of the Managing Committee of

the school and recommended the supersession of the Managing Committee on February 4, 1975. Pursuant to the said recommendation the

President of the Board issued an order dated December 18, 1975 superseding the Managing Committee of the school and appointed one Shri

P.C. Roy Chowdhury. Administrator. to take charge of the school.

2. Being aggrieved by the said order of supersession, the respondents instituted a suit being Title Suit No. 2223 of 1975 before the 8th Bench City

Civil Court, Calcutta against" the school and its President and Deputy Secretary and the said Administrator P.C. Roy Chowdhury, inter alia,

praying for a declaration that the said order of supersession was illegal and invalid and for a permanent injunction restraining the defendants from

giving any effect or further effect to the said order of supersession and from in any manner interfering with the functions of the plaintiffs, (the

respondents herein) and the members of the Managing. Committee of Udayan Institution for Girls. During the pendency of the suit, on May 29,

1976, the order of supersession dated December 18, 1975 was withdrawn and recalled and a fresh order of supersession was made by the

President of the Board on the ground of expiry of the term of the Managing Committee of the school. By the said order, the said P.C. Roy

Chowdhury was again appointed Administrator of the School. Upon the withdrawal of the previous order of supersession and the passing of a

fresh order of supersession, the respondents, by an amendment of the plaint challenged the subsequent order of supersession. It is the case of the

appellants that the Administrator after he had taken over charge of the school on June 6, 1976 was obstructed by the respondents in discharging

his duties as the Administrator and, accordingly, he shifted the school from 16, Gomes Lane. Calcutta to 16, Noor Mohammad Lane, Calcutta on

January 11, 1977. It appears that on January 21, 1978 the Board made a publication in the Ananda Bazar Patrika the English rendering of which is

as follows:

The address of the Udayan Institution for Girls, a girl school affiliated to the ""Board, is at 16. Noor Mohammad Lane, Calcutta-9. Any other

school of the same name elsewhere does not have the affiliation of the Board.

The respondents made two application for temporary injunction, one on June 22, 1976 and the other on January 28, 1977. The nature of

injunction that was prayed for in the applications will appear from the order of the learned Judge allowing the applications stated hereafter. The

case of the respondents was that the Administrator never assumed charge of the school, and that the school was never shifted to 16, Noor

Mohammad Lane, Calcutta. It was alleged that the Administrator started a new school under the identical name at 16, Noor Mohammad Lane.

Calcutta, with the help of some ex-teachers of the school. It was further alleged that no paper, document or any other article was shifted to the

new address. The learned Judge, 8th Bench City Civil Court, Calcutta by his order no. 26, dated January 10, 1979 disposed of both the

applications for temporary injunction which were filed by the respondents. It was held by the learned Judge that the Administrator failed to prove

that he had assumed charge of the school on June 3, 1976 or that he had been administering the same since then, as alleged. It was observed by

the learned Judge that under rule 8(3) of the said Rules, an Administrator could function for six months and his term might be extended by six

months more. So the Administrator had no locus standi after May 29, 1977 that is after the expiry of one year from the date of his appointment on

May 29, 1976, "Further, it was held by the learned that the respondents had made out a prima facie case against the validity of the order of

supersession and appointment of the Administrator, dated May 29, 1976, of the President of the Board. Upon the said findings, he ailed (he

application for temporary injunction tiled on June 22, 1976 restraining the defendants, that is, the Board and its officers from interfering with the

functioning of the respondents as members of the Managing Committee of Udayan Institution for Girls at 16, Gomes Lane, Calcutta and from

carrying on the Management and day-to-day administration of the said school. Further, the said P.C. Roy Chowdhury as restrained from acting as

Administrator of the said school till the disposal of the suit. On the second application filed on January 28, 1977, the learned Judge granted a

temporary injunction restraining the defendants from running a girls' school under the identical name of "Udayan Institution for Girls" at 16, Noor

Mohammad Lane, Calcutta or at any other place till the disposal of the suit and from holding out to the public that Udayan Institution for Girls had

been shifted from 16, Gomes Lane, Calcutta to 16, Noor Mohammed Lane, Calcutta.

3. Being aggrieved by the said order of temporary injunction, the Board preferred an appeal to this Court being P.M.A. No. 276 of 1979. This

court, after considering the facts and circumstances of the case and the submissions made on behalf of the parties, upheld the order of the learned

Judge. 8th Bench. City Civil Court, Calcutta, in so far as it restrained the defendants-appellants from interfering, with the respondents"

management and the running of Udayan Institution for Girls" at 16, Gomes Lane, Calcutta by virtue of the order of supersession, pending the

disposal of the suit. The order of the learned Judge, inter alia, restraining the defendants in the suit from running a girls' school under" the identical

name at 16, Noor Mohammad" Lane, Calcutta was set aside. By the same order, this Court disposed of an application of the respondents that

was Pled by them in the said appeal praying for payment of dearness allowance to the teachers of the school at 16, Gomes Lane, Calcutta and the

remission of the tuition fees of students reading from class V upto Class VIII. It may be mentioned here that at that time the State Government was

paying the dearness allowance of the teachers of all recognised secondary schools teaching up to class X and made the education of children free

from class V to Class VIII. In view of that, the respondents made the said prayer, and this court directed the Director of Secondary Education"

(Women) to pay to the teachers and the members of the non-teaching staff of the Udayan Institution for Girls at 16, Gomes Lane, Calcutta, the

dearness allowance with effect from January, 1977. So far as the tuition fees for students reading from class V to class VIII were concerned this

Court directed that the same should be paid by the Director of Secondary Education ("Women) after the; disposal of the suit, if such" disposal was

in favour of the respondents. The learned Judge 8th Bench City Civil court Calcutta was directed to" dispose of the suit as expeditiously as

possible and if it was not otherwise inconvenient for him he was directed to dispose of the same by the end of November 1979.

4. Despite the direction of this Court "to dispose of the suit by the end of November, 1979, it is still pending. It is the case of the respondent that

several adjournments had been taken on behalf of the said P.C. Roy Chowdhury, who was permitted to be examined on commission, on the

ground of his illness. It appears from a Circular dated October 16, 1979 issued by the Government of West Bengal that with effect from January

1, 1980 education of all children in West Bengal was made free up to and including class X in recognised secondary schools. It was directed that

no tuition fees should be realised with effect from January 1, 1980 from the boys and girls reading in classes IX and X by schools which were

admitted to the scheme. It may be mentioned here that prior to the said Circular education of children in West Bengal was already made free from

class V to class VIII. The Government agreed to give grants-in-aid as compensation for the loss of tuition fees to all recognised secondary school

BY another Circular of the Government dated June 8, 1980 it was directed that with the introduction of free education up to class X with effect

from January 1, 1980 in West Bengal, the State Government sanctioned grants for payment of the entire salary of the approved teaching and non-

teaching staff of recognised non-government secondary schools. The Government also sanctioned other grants from time to time to such

institutions.

5. After the said Circulars were issued the respondent made a representation to the District Inspector of Schools (Secondary Education), Calcutta

for payment of the salary of all the members of the teaching and non-teaching staff of the Udayan Institution for Girls at 16, Gomes Lane, Calcutta

in the said representation, it was also mentioned that the Managing Committee of the school had also accepted the scheme of free education to the

students of classes IX and X from the new session of 1980. As no reply to the said representation was given by the District Inspector of schools,

the respondents moved an application before this Court in the said appeal being F.M.A. No. 276 of 1979, praying for a direction on the Deputy

Director of Secondary Education (Women), West Bengal and the District Inspector of Schools (Secondary Education) for payment of tuition fees.

The said application was disposed of, inter alia, by an order granting liberty to the respondents to make an application before the City Civil Court

Judge in the said suit. Such an application could not be made by the respondents pursuant to the said liberty granted to them by this Court

inasmuch as the State of West Bengal or the Deputy Director of Secondary Education (Women). West Bengal is not a party in the suit.

Accordingly, they moved a writ petition before this Court, inter alia, praying for the payment of salary with dearness and other allowances of 18

teachers and also of the members of the non-teaching staff of the school namely. Udayan Institution for Girls at 16. Gomes Lane, Calcutta. As

stated already, the learned Judge allowed the said prayer and made absolute the Rule Nisi. Hence this appeal by the State of "West Bengal and its

said officers.

6. Mr. Arun Prokash Chatterjee, learned Senior Standing Counsel appearing on behalf of the appellants submits that the respondents who were

the writ petitioners have no legal right to claim payment of salaries, dearness and other allowances of the members of the teaching and non-teaching

staff of Udayan Institution for Girls at 16, Gomes Lane. Calcutta. The contention of the learned Counsel is that only the recognised secondary

schools are entitled to such grants and. as the said school represented by the respondents have been recognised by the Board, the respondents

have no legal right to lay any such claim.

7. There can be no doubt that Udayan institution for Girls at 16, Gomes Lane, Calcutta was a recognised secondary institution. After the

Administrator had started a school under the identical name at 16, Noor Mohammad Lane, Calcutta, the Board made a publication in the Ananda

Bazar Patrika, that only the school at 16. Noor Mohammad Lane, Calcutta was affiliated to the Board and any "other school of the same name

elsewhere did not have the affiliation of the Board. No order of the Board withdrawing the affiliation of Udayan Institution for Girls at 16, Gomes

Lane, Calcutta has been produced before us or annexed to the affidavit of the appellants. To recall or withdraw the affiliation or recognition is one

thing and to say that a particular school does not have the affiliation is another thing. In the absence of any specific order withdrawing the affiliation

or recognition of Udayan Institution for Girls at 16. Gomes Lane. Calcutta, the said publication in the Ananda Bazar Patrika has no force and is of

no effect whatsoever. This Court in the said appeal being F.M.A. No. 376 of 1979 restrained the Board and its officers from interfering with the

functioning of the Managing Committee of the Udayan Institution for Girls at 16 Gomes Lane, Calcutta. That order is still binding on the. Board and

the Board had no jurisdiction whatsoever to Withdraw or recall the affiliation or recognition of the said school, for such withdrawal would, in our

opinion, mean interference with the functioning of the Managing Committee of the school under the Board. The most significant fact that may be

pointed out is that the Board have not preferred any appeal against the order of the learned Judge making the Rule Nisi absolute. It does not.

therefore, in our opinion, lie in the mouth of the State Government and its officers to say that the Udayan Institution for girls at 16, Gomes Lane.

Calcutta is not a recognised secondary school under the Board.

8. It is true that no one has any legal right to claim any grant-in-aid or payment of salaries, dearness allowance etc. of the members of the teaching

and non-teaching staff of any"" school out when the Government has introduced a scheme for free education of boys and girls upto class X in West

Bengal and directed all recognised secondary schools not to realise tuition fees from students, and the respondents having accepted the scheme

and given effect to the same, the Government is precluded from making a discrimination between Udayan Institution for Girls at 16. Gomes Lane.

Calcutta and other recognised secondary institutions. Such a discrimination will undoubtedly be violative of the provision of Article 14 of the

Constitution. In the circumstances, we do not think that there is any force in the contention of the learned Senior Standing counsel that the

respondents have no legal right to move the writ petition praying for a direction on the Government to make payment of salaries, dearness and

other allowances of the members of the teaching and non-teaching staff of their school. Similarly, for "the same reasons, the contention that the

respondents are trying to enforce the administrative instructions as contained in the said Circulars of the Government relating to the payment of the

salary and dearness allowances of teachers and members of the non-teaching staff of the school in lieu of the remission of tuition fees of students,

cannot be accepted. Our attention has been drawn by the learned Senior Standing Counsel to two other suits filed by the respondents. It appears

that the respondents filed a suit being T.S. No. 435 of 1978 in the City Civil Court, Calcutta against the Administrator of the Board, the said Sri

P.C. Roy Chowdhury and one Sm. Jharna Sen as defendants, inter alia, praying for a declaration that the defendants were incompetent and had no

right, title or authority to reconstitute the Managing Committee of Udayan Institution for Girls, 16, Noor Mohammad Lane, Calcutta. The

respondents also instituted another suit being T.S. No. 20 of 1976 renumbered as T. S. No. 45 of 1978. inter alia, praying for a declaration that

Jharna Sen and others had absented themselves from Udayan Institution for Girls at 16, Gorges Lane; Calcutta, and that they were no longer in

service of the said school. Both the said suits were dismissed the former on June 1, 1979 and the latter on September 14, 1979. In the mean time,

on May 6, 1979, the Managing Committee of Udayan Institution for Girls at 16, Noor Mohammad Lane, Calcutta was constituted. It is contended

by the learned Senior Standing Counsel that the decisions in the above suits would operate as res judicata in the present writ proceedings and in

the said T.S. No. 2223 of 1975 which is still pending before the learned Judge, 8th Bench. City Civil Court. Calcutta No. decision of any of the

said two suits has been placed before us nor has the institution of the same been pleaded in any affidavit filed by the appellants either in the trial

Court or before us. It is not known whether the said two suits were dismissed for default or not. Be that as it may even assuming that both the suits

were disposed of on merits, there is no question of res judicata in view of the prayers made in the said suits which related to Udayan Institution for

Girls at 16, Noor Mohammed Lane, Calcutta Both the said T.S. No. 2223 of 1975 and the present writ proceedings relate to the Udayan

Institution for Girls situate at 16, Gomes Lane. Calcutta. In the writ petition, the prayer of the respondents is, inter alia, for a direction upon the

Director of Secondary Education (Women) for payment of the salaries, dearness and other allowances of the members of the teaching and non-

teaching staff of the said school. Moreover, there is no identity of parties in all these suits and the writ proceedings. In the circumstances, we are

unable to accept the contention of the learned Senior Standing Counsel that the decisions in the above two suits instituted by the respondents

would operate as res judicata in the said T. S. No. 2223 of 1975 and in the writ proceedings, and that the claim made by the respondents in the

writ petition is not maintainable.

9. It is next contended on behalf of the appellants that, in any event, this Court should not grant a temporary mandatory injunction. It is submitted

by the learned Senior Standing Counsel that any order that may be passed on the writ petition allowing the prayers of the respondents would

tantamount to a temporary mandatory injunction, for the rights of the parties would be finally decided in the said T.S. No. 2223 of 1975. It is,

accordingly, contended by the learned Senior Standing Counsel that this Court should not grant a temporary mandatory injunction. In support of

this contention, he has placed reliance on a Bench decision of 1 his Court in Nahdan Pictures Ltd v. Art Pictures Ltd. AIR 1956 Cal. 426. In that

case, it has been observed by Chakravarti, C.J. delivering the judgment of the Bench that it is only in very rare cases that a mandatory injunction is

granted on an interlocutory application and instances where such an injunction is granted by means of an ad interim order pending the decision of

the application itself are almost unknown.

10. In the first place, we do not agree with the learned Senior Standing Counsel that the order that will be passed on the writ petition disposing of

the same would be in the nature of a temporary mandatory injunction A temporary injunction is granted in aid of the preservation of the right

claimed by the planum in the suit pending the disposal thereof. Any order disposing of the suit or finally deciding the rights of the parties cannot be

construed to be an order of temporary injunction. Even, when a Court, in disposing of an action, grants an injunction for a specified period

directing the defendants to do or perform certain acts it cannot be characterised as a temporary mandatory injunction, in the circumstances, the

above Bench decision, in our opinion, has no manner of application. Even assuming that the principles laid down in that decision apply to the instant

case, still, as has been observed in that case, temporary mandatory injunction can be granted in very rare cases on an interlocutory application.

There can be no doubt that if the Government does not make the grant-in-aid including the salaries, dearness allowance etc. of the member the

staff of Udayan Institution for Girls at 16, Gomes Lane, Calcutta, the said institution will be greatly prejudiced and, may have to be closed In our

opinion, in such a situation, the Court can grant a temporary mandatory injunction on an interlocutory application. As we have already said, the writ

petition is not an interlocutory application nor the order disposing of the same would tantamount to temporary mandatory injunction. The

contention of the appellant, is accordingly, overruled.

11. The next point that has been urged on behalf of the appellant is that in view of the order dated July 11.1979 passed by this Court in the said

F.M.A. No. 276 of 1979, the prayer in the writ petition is not maintainable. In the said order, this Court directed that so far as the tuition fees for

students reading from class V to class VIII were concerned, the same would be paid by the Director of Secondary Education (Women) after the

disposal of the suit, if such disposal was in favour of the plaintiff respondents. It is submitted by the learned Senior Standing Counsel that as per the

direction of this Court, the Government grant including salaries, dearness allowance etc. payable on account of remission of tuition fees will be paid

to the respondents only if they succeed in the suit and, as such, the prayer in the writ petition for such a claim is premature and not maintainable. It

is true that such a direction was given by this Court but, at the same time, it cannot be lost sight of that this Court also directed the learned City

Civil Court Judge to dispose of the suit within four months, that is, by the end of November 1979. As the suit has not yet been disposed of on the

ground of illness of the said Sri P.C. Roy Chowdhury, we do not think that the respondents are precluded from laying a claim for the salaries,

dearness and other allowances of the members of the teaching and non-teaching staff of Udayan Institution for Girls at 16, Gomes Lane, Calcutta.

We are, therefore, unable to accept the said contention made on behalf of the appellants.

12. Lastly, it has been vehemently urged by the learned Senior Standing Counsel that the balance of convenience and inconvenience lies against the

respondents. It is contended that if the respondents ultimately fail in the said T.S. No. 2223 of 1975 the appellants would not be able to realise the

considerable sum of money that would be paid to the members of the teaching and non-teaching staff of the school in the mean time. We do not

appreciate such a contention as advanced on He-half of the Government. The Government is responsible for imparting education to the children of

the State indeed, about 400 girls are reading in Udayan Institution for Girls at 16 Gomes Lane, Calcutta. The payments will be made by the

Government to the members of the teaching and non-teaching staff of the said Institution and not to the respondents. If no such payment is made

on account of salaries and dearness allowance, the said institution will be in great predicament and might be closed to the great prejudice of the girl

students reading therein. It may be that the Government and the Board have fallen out with the members of the Managing Committee of the said

school, but it is not understandable why the staff and the students of the school should be penalised and made to suffer. In our opinion, the

Government has no right to prejudicially affect the education of the 400; girl students reading in Udayan Institution for Girls at 16, Gomes Lane

Calcutta, which would be contrary to the responsibility of the Government to impart education to the children of the State. In the circumstances,

we are firmly of the view that the balance of convenience and inconvenience lies in favour of the respondents for a direction upon the appellants to

make the payment as ordered by the learned trial Judge on the writ petition. No other point has been urged in this appeal.

13. For the reasons aforesaid, the judgment of the learned trial Judge is affirmed and this appeal is dismissed. There will, however, be no order for

costs.

14. The appellants are directed to make payment of salaries, dearness and other allowances at the rate declared by the Government according to

the rules in force with effect from January 1, 1980 up to the month of June, 1982, to The members of the teaching and non-teaching staff of the

Udayan Institution for Girls at 16, Gomes Lane, Calcutta, within eight weeks from date and thereafter, to go on making such payment until and

unless it is decided by any Court of competent jurisdiction that they are not liable to make such payment.

Monoj Kumar Mukherjee, J.

I agree.