In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Justice Subrata Talukdar
And
The Hon'ble Justice Lapita Banerji

M.A.T No.516 of 2022

With

IA No. CAN 1 of 2022

The Managing Committee of Mitra Institution (Main)
Vs.
Dr. Anisur Rahman and others

For the appellant	:	Mr. Soumya Majumder, Ms. Mayuri Ghosh
For the respondent/writ petitioner	:	Mr. Sakti Pada Jana, Mr. Subhajyoti Das
For the proforma respondents	:	Mr. Rajib Roy, Ms. Sohini Kundu
For the State	:	Mr. Malay Kumar Singh, Mr. Rajaram Banerjee
Hearing concluded on	:	18.07.2022
Judgment on	:	03.08.2022

1. **Lapita Banerji, J:-** This appeal and application arises out of a

judgment and order dated March 8, 2022 (impugned order) passed by an Hon'ble Single Bench of this High Court. By the impugned order, the Hon'ble Single Bench allowed the writ petition and directed the Headmaster of the school to issue and send a 'No Liability Certificate' in favour of the petitioner to the Treasury Officer concerned, Barasat-II, through District Inspector of Schools (SE), Kolkata. The said 'No Liability Certificate' was to be issued for the purpose of disbursement of pensionary benefits and all the other post retirement benefits to the writ petitioner/private respondent No.1/Retired Headmaster as per Pension Payment Order (for short 'the PPO') dated February 24, 2021.

2. Being aggrieved by and dissatisfied with the impugned order, the Managing Committee of the school in issue/respondent no.5 in the writ petition, preferred the present appeal being MAT No.516 of 2022.

3. The principle grounds of challenge in the appeal are that, after the discovery of serious financial irregularities committed by the writ petitioner/Headmaster, subsequent to his retirement on June 30, 2020, 'No Liability Certificate' could not have been issued by the appellant/Managing Committee of the school in issue. Various illegal activities/financial irregularities for the year 2017-18 have been discovered against the writ petitioner post his retirement. The writ petitioner appointed a private auditor for the school for two years prior to his retirement, excluding the empanelled auditors appointed by the Commissioner of School Education which is impermissible in law. Hence, the Managing Committee of the school passed a resolution to scrutinize the accounts for the years 2017-18 by an accountant.

4. The Hon'ble Single Bench without considering the report by the said independent accountant wrongly described as 'independent auditor' in paragraph no.8 of the stay petition being CAN No.1 of 2022 directed the Headmaster of the school in issue to release the 'No Liability Certificate' in favour of the writ petitioner.

5. Furthermore, in Paragraph no.8 of the stay petition the years of scrutiny by the "said auditor" have been stated to be for the years 2017-18, 2018-19 and 2019-20 where as the report at pages 242-246 is only for the year 2017-18.

6. The admitted facts before this Court are that:

i. The writ petitioner joined the service as a Headmaster of the school on May 14, 2004;

ii. The writ petitioner retired from service on June 30, 2020 after rendering 33 years of service as an Assistant Teacher and thereafter 16 years of service as the Headmaster of the school without any break in service;

iii. There were no disciplinary proceedings pending against the writ petitioner at the time of his retirement;

iv. The President of the school issued a 'No Liability Certificate' in favour of the writ petitioner on August 2, 2020;

v. The writ petitioner filed all the pension papers offline to the District Inspector of Schools (SE) on August 13, 2020;

vi. The Director of Pension, Provident Fund and Group Insurance, West Bengal issued a PPO in favour of the writ petitioner *vide*

Memo No.SEC/BRS/21/F/1631 dated February 24, 2021;

vii. Despite several representations 'No Liability Certificate' was not issued by the Teacher-in-Charge/respondent no.6 in the writ petition pursuant to the PPO dated February 24, 2021.

7. Mr. Majumder, appearing for the appellant/Managing Committee of the school in issue argued that it was not possible for the Teacher-in-Charge (for short, as 'the TIC') of the School to issue a 'No Liability Certificate' in favour of the writ petitioner/retired Headmaster since he, while discharging his duties, completed audit of the accounts for the years 2017-18, 2018-19, 2019-20 through a private auditor, which was not permissible under the law. He argued that the resolution taken by the School on 29^{th} June, 2020, just a day prior the retirement of the petitioner was an illegal resolution. The 'No Liability Certificate' issued by the President of the Managing Committee on August 2, 2020 was not permitted under the law as the same was issued prior to date of PPO.

8. He relied on the Memo dated September 15, 2021 passed by the Commissioner of School Education (CSE) whereby he has held :

"2. The action of the Headmaster in auditing school accounts through his own appointed auditor is to fulfil his vested interest and hence the Commissioner of School Education, West Bengal is not in a position to ratify this action.

3. The Headmaster himself has to bear the cost of this audit. In case it is paid out of school-fund then school authority has to recover the amount from him. "

9. Since the CSE held that the Headmaster acted in his vested interests in appointing his own auditor and the said appointment was not ratified, the present Headmaster/Teacher-in-Charge of the School was directed to recover the amount so spent out of the school fund from the terminal benefit of the writ petitioner/retired Headmaster in the event he was unable to recoup such expenses to the School. The present Managing Committee of the School/appellant by a resolution passed in November, 2021 appointed an accountant, Mr. Debdas Mitra to scrutinize and give a report regarding the audited accounts relating to the financial years 2017-18 and the said accountant found several discrepancies/financial irregularities in the audit for the year 2017-18. The said irregularities were all enunciated in his report dated November 10, 2021. On the basis of such report not only the 'No Liability Certificate' was not issued but also an FIR was lodged in December, 2021 to investigate such illegalities.

10. Mr. Sanyal, Learned Counsel, along with Mr. Jana, appearing for the private respondent/writ petitioner argued that no disciplinary proceeding was ever initiated against the writ petitioner and he has served the School as the Headmaster for 16 long years. Referring to the Memo dated September 15, 2021, he submitted that the Commissioner of School Education in no uncertain terms directed the Headmaster/Teacher-in-Charge to make necessary arrangement for issuing of 'No Objection/No Liability Certificate' in favour of the retired Headmaster.

11. Clause 4 of the Memo dated September 15, 2021 reads as thus:

> *"4. While issuing No Objection / No Liability Certificate in favour of*

Dr. Anisur Rahaman, Retired Headmaster of the School the amount so spent out of school fund has to show as liability recoverable from terminal benefit of Dr. Anisur Rahaman, Retired headmaster of the School, if he is unable to recoup such expenses to the school."

12. The Headmaster/TIC was further requested "*to make necessary arrangement accordingly in the light of above observation and opinions. Since a writ petition (WPA No.97writ petition (WPA No.9745 of 2021) has already been filed in the Calcutta High Court regarding this matter he is requested to do needful at the earliest to avoid further legal complications and hazards.*

An "Action taken report" shall be sent this Directorate accordingly and this may be treated as extremely urgent."

13. Giving a go-bye to the directions passed by the Commissioner of School Education the **TIC**/Respondent No.6 not only refused to issue a 'No Liability Certificate' but also lodged an FIR basing on a purported report by an accountant who was appointed by the appellant for the purpose of scrutinizing the accounts for the years 2017-18. The **TIC** had no authority in law to do the same in the teeth of the directions given by the Commissioner of School Education. The appellant lodged an FIR in December, 2021 almost one and a half years after the retirement of the writ petitioner/Headmaster from the School on June 30, 2020.

14. Mr. Sanyal further submits that the appellant refused to issue the 'No Liability Certificate' despite the order passed by the Hon'ble Single Bench and illegally withheld the same, thereby preventing the disbursement of the legitimate post retiral benefits of the petitioner.

15. Mr. Sanyal further submitted that two years prior to his retirement when the writ petitioner was the Headmaster of the said School, he was constrained to appoint a private auditor since there was no empanelled auditors attached to the Office of the Commissioner of School Education during the pandemic period. Therefore, the writ petitioner had no option but to appoint an auditor to maintain the regularity of the accounts of the School in issue and as such the auditor who was appointed was none other than the earlier empanelled auditor of the Commissioner of School Education, whose term had, however, expired.

16. During the course of hearing of the appeal being MAT No.516 of 2022 and the connected application being CAN No.1 of 2022, it came to the notice of This Court that the accountant, Mr. Debdas Mitra appointed by the appellant to scrutinize the accounts of a qualified chartered accountant and auditor was not a qualified chartered accountant himself. The eligibility of the purported accountant to issue such a report at pages 242 to 246 of the stay application was *prima facie* in doubt. In order to clarify the eligibility of the purported accountant This Court directed the appellant to implead the Institute of Chartered Accountants of India as a proforma respondent and file its comments on the report given by the accountant appearing at pages 242 to 246 of the stay petition.

17. During the course of hearing on July 5, 2022 a communication was produced on behalf of the Institute of Chartered Accountants of India which clearly reads thus:-

"Mr. Debdas Mitra is not a member of the Institute and therefore, does not hold the Qualification of Chartered Accountancy. Therefore, it is to be submitted that Mr. Debdas Mitra, Auditor in the above mentioned matter (MAT 516 OF 2020 with IA No. CAN 1 of 2022) is not a Chartered Accountant.

Further, it is stated that while verifying the credentials of Mr. Debdas Mitra, it was found that a student namely Mr. Debdas Mitra (Student Registration Number ERO0072966) was registered with the Institute. However, he did not clear the Final Examination of Chartered Accountancy."

18. Having considered the rival submissions of the parties and the materials placed on record this Court finds:-

(i) The writ petitioner/private respondent joined service as a Headmaster of the School on May 14, 2004.

(ii) As the Headmaster of the School he rendered uninterrupted service till the date of his retirement on June 30, 2020.

(iii) Reference was made by the appellant to a Resolution of 2010 taken for the purpose of suspending the retired Headmaster/writ petitioner for purported commission of financial and academic irregularities. During the pendency of litigation, challenging the said Resolution of 2010, the West Bengal Board of Secondary Education (for short 'the Board') by its order dated March 12, 2015 decided to disapprove the proposal of disciplinary proceedings against the Retired Headmaster. The writ petitioner/Retired Headmaster was reinstated to the services immediately and the period of suspension was treated as "period spent on duty".

(iv) Such a fact of a proposed disciplinary proceeding was pleaded by the appellant only to cause confusion and tarnish the reputation of the writ petitioner/retired Headmaster.

(v) By a resolution dated June 29, 2020 taken by the Managing Committee of the School, it was unanimously resolved that the prayer for writ petitioner's Provident Fund amount would be sent by the President to the DI(SE) for its approval and release.

(vi) Furthermore, by the said Resolution dated June 29, 2020, it was also unanimously resolved that the TIC/respondent no.6 would be appointed to perform his duties from July 1, 2020 and he will issue "No Liability Certificate" to the retired Headmaster as and when required by him for getting his retiral benefits including pension and gratuity from the Treasury Office.

(vii) Immediately, upon being appointed as the Teacher-in-Charge, the respondent no.6 by his letter dated July 2, 2020 informed the DI that the retired Headmaster did not hand over his total charge to him and, therefore, the liability of official papers was still on the shoulders of the retired Headmaster.

(viii) On the following day i.e. July 3, 2020, the respondent no.6/TIC *vide* GD No.179 informed the Officer-in-Charge, Amherst Street Police Station that, by virtue of the total charge not being handed over to him, the liability of the official papers were still on the shoulder of the retired Headmaster. The contents of this letter are similar to the contents of the letter dated July 2, 2020.

(ix) Several documents annexed to the writ petition evidence the handing over of the charge by the retired Headmaster to the Teacher-in-Charge on July 10, 2020. Such documents contain a chart showing the audited reports of the School from the year 1997-98 till 2019-20. From the said chart, it will unequivocally appear that the accounts of the school have been audited by M/s. M.C. Som & Company from the year 2014-15 till 2019-20 (retirement of the Headmaster).

(x) Upon consideration of the application by the writ petitioner/retired Headmaster, the Directorate of Pension, Provident Fund and Group Insurance issued the PPO on February 24, 2021.

(xi) Immediately upon receipt of the PPO the writ petitioner made a representation before the School for issuance of a 'No Liability Certificate'.

(xii) Upon receipt of the said request/representation, the

TIC/respondent no.6 by his letter dated February 27, 2021 informed the writ petitioner that 'No Liability Certificate' could not be issued since the audit for financial years 2017-18 and 2018-19 was to be done by M/s. Gupta Chanda & Company (Government empanelled auditor) in respect of the School and not by M/s. M.C. Som & Company. Furthermore, no panel of auditors was published by the School Education Department for the financial year 2019-20 and, therefore, the petitioner had acted beyond his financial power and paid professional fees to an unauthorized agency from the School fund for auditing the accounts. Therefore, the matter was referred to the Commissioner of School Education, Government of West Bengal for seeking his advice.

(xiii) The TIC/respondent no.6 on the very same date i.e. February 27, 2021 communicated the allegations against the writ petitioner to the Commissioner of School Education.

(xiv) The TIC/respondent no.6 again wrote to the District Inspector of School on April 19, 2021 enumerating the reasons for which the Managing Committee in its meeting dated February 26, 2021 decided not to issue the 'No Liability Certificate' to the retired headmaster after PPO dated February 24, 2021. The only reason for the non-issuance as per the said communication related to illegal appointment of M/s. M.C. Som & Company to audit the records of the School from 2017-18 till 2019-20.

(xv) Upon adjudicating the complaints made by the TIC/respondent no.6, the Commissioner of School Education came to the finding vide Memo No.1C/373/LS/2021 dated September 15, 2021 (supra) that while issuing 'No Objection/No Liability Certificate' in favour of the retired Headmaster, the School authority would be allowed to show the amounts spent by him as the cost of the audit, as a liability, recoverable from his terminal benefits. The TIC was requested to do the needful at the earliest to avoid "further legal complications and hazards" especially in the eye of law since a writ petition being WPA No.9745 of 2021 was pending before the Hon'ble High Court at Calcutta.

(xvi) Immediately upon receipt of the said Memo dated September 15, 2021, the appellant took a resolution in November, 2021 by which the purported accountant, Mr. Debdas Mitra was appointed to scrutinize the accounts of 2017-18. TIC/respondent no.6 lodged an FIR on December 7, 2021 basing on the purported report instead of complying with the Memo dated September 15, 2021. Overzealousness of the Teacher-in-Charge/respondent no.6 is not a fact lost upon This Court and the same has been ratified by the appellant/Managing Committee. The TIC was acting hand in gloves with the managing committee.

(xvii) The TIC acted beyond the scope of his duties and sought to give a go-bye to the Memo dated September 15, 2021.

(xviii) The appellant has sought to rely on a part of the Memo dated September 15, 2021 (supra) which read that the "retired Headmaster in order to fulfill his vested interest has appointed his own auditor and the said position was not ratified by the Commissioner of School Education". The part of the Memo requiring the TIC to issue the 'No Liability Certificate' at the earliest was given a complete go-bye by the TIC as well as the appellant.

(xix) It is a well-settled principle of law and a canon of construction that no document can be read in part. The entire document is to be read as a whole. Significantly, the appellant has been silent as to the reason behind it not following the directions issued by the CSE. It failed to explain its conduct. No authority in law permitted the Teacher-in-Charge to give a go-bye to the CSE's directions and *suo moto* initiate a process of investigation.

(xx) The action and/ conduct of the appellant in ratifying the action of TIC smacks of *mala fides,* arbitrariness, highhandedness and is in colourable exercise of power.

(xxi) Instead of acting upon the recommendations/directions given by the CSE, the appellant by a Resolution dated November, 2021 decided to appoint one Mr. Debdas Mitra

(B.Com Hons.), C.A. (Inter) to scrutinize the audited accounts for the year 2017-18. No approval has been taken either from the DI or the CSE for the said scrutiny. In fact, the said Resolution of November, 2021 was taken in the teeth of the directions/recommendations issued by the CSE.

(xxii) Paragraph No. 8 in the stay petition wrongly describes Deb Das Mitra as an 'independent auditor' and also wrongly describes the number of years of scrutiny. It has been affirmed by the present 'Headmaster' and secretary of the school-in-issue as true to his knowledge and the same tantamounts to misstatement on oath.

(xxiii) The eligibility of a C.A. (Inter) to scrutinize the audited report of a qualified Chartered Accountant who was a Government empanelled auditor for the years 2014-15, 2015-16 and 2016-17 was also doubted by this Court. Therefore, this Court directed the Institute of Chartered Accountant of India to be added as a proforma party respondent.

(xxiv) The conduct of the purported accountant, Mr. Debdas Mitra in giving a purported report, scrutinizing the report of an erstwhile empanelled auditor and chartered accountant without being a qualified chartered accountant himself is not appreciated by This Court. The authority of Mr. Debdas Mitra is held to be undoubtedly questionable, relying on the communication issued by the Institute of Chartered Accountants of India.

(xxv) This Court feels that Mr. Mitra being a student of chartered accountancy should have known the appropriateness of his conduct and behaved accordingly. The irresponsible behaviour on his part is deprecated. A copy of this judgment and order passed by This Court is to be accordingly forwarded by the **Registry** to the Institute of Chartered Accountants of India for their reference and record.

(xxvi) It is also not lost upon This Court that instead of getting the correctness/validity of the audit report of 2017-18 scrutinized by M/s. Gupta & Chandan Co. who was admittedly the Government empanelled auditor for the said year, the Management of the school sought to get the audit report scrutinized by a student of accountancy.

(xxvii) Basing on the said purported report dated November 10, 2021, the appellant with *mala fide* intent lodged the FIR dated December 7, 2021.

(xxviii) Pursuant to this Court calling for comments by the Institute of Chartered Accountant of India/added Respondent No.5, regarding the eligibility of Mr. Debdas Mitra to give a report, a 'No Liability Certificate' was issued by the appellant and the retiral dues were also released to the respondent no.1/Retired Headmaster.

19. In the light of the discussions above, it is held that the TIC has acted in gross abuse of power. He withheld the 'No Liability Certificate' and ordered scrutinization of an audited report for the year 2017-18in the teeth of the order dated September 15, 2021 passed by the CSE. The TIC had no authority to act in such abuse of process of law.

20. Admittedly, there was no disciplinary proceeding or criminal proceeding pending against the writ petitioner and the TIC had no legal right to withhold the issuance of 'No Liability Certificate' in favour of the writ petitioner/retired headmaster.

21. This Court has no hesitation to hold that the TIC acted with *mala fide* intent and the action of the TIC is deprecated. The appellant's conduct in ratifying the actions of the TIC/Respondent No.6 is also deprecated. This Court agrees with the finding of the Hon'ble Single Bench insofar as the action/conduct of the appellant/school authorities was held to be unjust, unfair, *mala fide*, arbitrary and illegal.

22. Therefore, the appeal being **MAT No.516 of 2022** and the application being **CAN No.1 of 2022** are **dismissed with costs** assessed at Rs.1,00,000/- (Rupees One Lakh). 50 per cent of the said costs would be payable to the respondent no.1/writ petitioner within two weeks from the date of passing of this order considering the harassment suffered by a retired Headmaster in the hands of the appellant after serving the School for 16 long years. 50 per cent of the awarded costs would be payable to the

Law Clerks' Association, High Court, Calcutta within two weeks from date. In the event the said costs are not deposited within the stipulated time, then the monthly salary of the TIC/Respondent No.6 will be stopped from the month of August, 2022 till the entirety of such costs are recovered from his salary.

23. All parties to act on the downloaded server copy of this order from the website.

24. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

I agree.

(Subrata Talukdar, J.) **(Lapita Banerji, J.)**