

MAT 1226 of 2022
With
IA. No. CAN 1 of 2022

Gopal Dey & Ors.
vs.
State of West Bengal & Ors.

Mr. Subir Sanyal
Mr. Suddhasatya Banerjee
Mr. Supratic Roy
Mr. Amit Dey
Ms. S. Dutta

....for the appellants

Mr. Shashwat Nayak
Mr. Debottam Das

....for the respondent Nos. 6 & 7

Mr. Biswabrata Basu Mallick
Mr. Sayan Ganguly

.....for the State-respondents

Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag
Mr. Tirthankar Dey

....for the BMC

Mr. Shehnaz Tareq Mina

.....for the Board

Mr. Anindya Lahiri
Mr. Samrat Dey Paul

.....for the added respondent

Party/Parties is/are represented in the order of their name/names as printed above in the cause-title.

Today also this Court has the benefit of hearing strong and elaborate arguments in support of their respective stand as placed by learned Counsel for the parties.

The issue on which the arguments revolve has been already discussed in the previous order of this Court dated 16th August, 2022. Briefly stated, the

appellants argue that the communication of the West Bengal Board of Secondary Education (Board) dated 10th June, 2004 outlining a special constitution for composition of the Managing Committee of the School-in issue, which functions under the name and style of Bidhannagar Municipal School, is *de hors* the governing Rules and particularly Rules 6, 6A of the West Bengal Board of Secondary Education Act, 1969 (for short the 1969 Act).

The appellants through Mr. Sanyal, learned Counsel and Mr. Banerjee, learned Counsel, stress the point that although since inception of the school, a Managing Committee has run the affairs of the said School in terms of the communication dated 10th June, 2004 wherein the bone of contention in this *lis* is the nomination of four Councillors by the Bidhannagar Municipal Corporation (for short the Corporation), since such nomination has no place in terms of Rules 6 and 6A of the 1969 Act, the same must be treated as *non est*.

It is submitted that therefore the appellants pray for appointment of an Administrator by the Board to run the affairs of the School till a Managing Committee is constituted strictly in terms of Rules 6 and 6A of the 1969 Act.

Mr. Sanyal also relies on Rule 8(1) of the 1969 Act to emphasize the point that the Executive Committee of the Board has the necessary powers to supersede a Managing Committee of an institution by appointing an Administrator or *ad hoc* committee to run the affairs till a Managing Committee is properly constituted. The appellants point out that at this juncture of time since elections to the new Managing Committee are scheduled to take place in terms of the affirmation received from Hon'ble Single Bench *vide* its order dated 20 July, 2022, such newly constituted Managing Committee must be in terms of Rules 6 and 6A (*supra*) or, not be constituted at all.

Mr. Bandopadhyay, learned Counsel appearing for the Corporation, opposes the prayer made by Mr. Sanyal and draws the attention of this Court to Rule 8(3) of the 1969 Act. It is submitted that Rule 8(3) empowers the Executive Committee of the Board to approve on the application of **any** institution or class of institutions a special constitution in favour of such institution. Such power to approve a special constitution of a Managing Committee inheres in the Executive Committee notwithstanding anything contained in the 1969 Act.

It is further pointed out that the Executive Committee shall place due regard while recommending a special constitution to the recommendation of the Director of the School Education.

Next, this Court is taken both by Mr. Bandopadhyay, learned Counsel appearing for the Corporation and Mr. Mina, learned Counsel appearing for the Board, to a Short Report filed by the Board. Both learned Counsel stress the fact that at the time of inception of the said School the recommendation as required under Rule 8(3) (*supra*) was addressed by the Director of School Education on 17th March, 2004 to the Secretary of the Board. The recommendation sought, for approval of a special constitution of the Managing Committee of the School.

Reliance is also placed on a document dated 4th February, 2004 directed to the Directorate of Education (SE) by the Organising Secretary of the School-in issue seeking a recommendation for a special constitution of the School.

It is thus submitted by both Mr. Bandopadhyay and Mr. Mina that sufficient grounds exist in support of the communication dated 10th June, 2004

recommending a special constitution pursuant to invocation of the provisions of Rule 8(3) of the 1969 Act.

Mr. Lahiri, learned Counsel appearing for one of the proposed nominated members to the newly constituted Managing Committee, submits that the legality of the communication of the Officer-on-Special Duty of the Corporation dated 17th June, 2022, which is the subject matter of challenge in the writ petition, has been kept open for consideration by the Hon'ble Single Bench and, in the event at the interim stage any binding direction is passed by any Court changing the composition of the constitution of the Managing Committee which thus far subsists, the same shall amount to granting a final relief to the appellants.

Mr. Lahiri further raises the point that the appellants have so far been party to the management of the School in terms of the special constitution sanctioned by the communication dated 10th June, 2004. Now, in view of the fact that objections with regard to nomination of one member in terms of the impugned communication dated 17th June, 2022 are raised, the appellants have shifted their position by relying on the 1969 Act.

Having heard the parties and considering the materials placed, this Court is of the view that the stand of the appellants/the writ petitioners with regard to the undiluted application of Rules 6 and 6A of the 1969 Act requires to be tested in terms of the powers of the Executive Committee of the Board to put in place a special constitution in terms of Rule 8(3) of the 1969 Act.

This Court is however of the view that in the face of any of the statutory provisions which may find favour with the Court at the time of ultimate adjudication, no plea of estoppel or waiver can be raised against any party for taking recourse to a statutory provision. Accordingly, at this stage this Court does not find any reason to interfere with the order passed by the Hon'ble Single Bench except, that the newly elected Managing Committee shall operate subject to any order passed by the Hon'ble Single Bench.

It will be also open to the parties to approach the Hon'ble Single Bench to approve the name of a co signatory to operate the bank account of the School in issue.

The Report filed by the Board be kept on record.

Since Affidavits are not invited, all other allegations are deemed to be denied.

All parties to act on a server copy of this order downloaded from the official website of this Court.

Urgent xerox certified copy of this order, if applied for be made available to the parties upon compliance of the requisite formalities.

(Lapita Banerji, J.)

(Subrata Talukdar, J)