

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.A.23859 of 2019

With
CAN 1 of 2021
CAN 2 of 2022
CAN 3 of 2022
CAN 4 of 2022
CAN 5 of 2022

Murshidabad College of Engineering and Technology and
Human Resources Development and Anr.

-vs-

State of West Bengal & Ors.

For the petitioners : Mr. Sakya Sen,
Mr. S.K. Gupta,
Mr. Habibul Islam,

For the respondent Nos.4 & 5 : Mr. Samim Ahammed,
Ms. Ambiya Khatun,

Hearing concluded on : 12.05.2022

Judgment on : 20.12.2022

Ravi Krishan Kapur, J.:

1. This petition pertains to the Murshidabad College of Engineering and Technology and Human Resource Development (the society) which also runs an Engineering and Management College at Behrampur.

2. Briefly, the petitioners assail two separate resolutions dated 19 February, 2005 and 11 June, 2015 respectively, whereby the Memorandum and Regulations of the society have been altered.

3. The society was incorporated in the year 1997. In or about August, 1998, an engineering college under the name and style of Murshidabad College of Engineering and Technology was established. The Memorandum of Association of the society stipulated that the Chairman, Vice Chairman and Member Secretary are all Ex-Officio posts were to be held by the Sabhadhipati (Murshidabad Zilla Parishad), District Magistrate, Murshidabad and Additional Executive Officer (Murshidabad Zilla Parishad) respectively. Except three of the above posts, the remaining four posts of the Governing Body were also to be held by persons holding the following designations:

- a) Karmadhakshya, Siksha Sanskriti Tathya O Krira Sthayee Samiti, Murshidabad ZP
- b) Principal, K. N. College, Berhampore
- c) Principal, College of Textile Technology, Murshidabad
- d) Principal, Murshidabad Institute of Technology

4. The first governing body of the society was formed on 17 November, 1997 wherein one Nripen Choudhury, who was also

the Sabhadipati (Murshidabad Zilla Parishad), was appointed as the Chairman of the society. The tenure of Nripen Choudhury, as Chairman expired on 17 August, 1998 and he ought to have been replaced as Chairman in the usual course of business. However, Nripen Choudhury without authority of law continued to hold office until his resignation in 2014. It is alleged that the said Nripen Choudhury unlawfully caused an alteration to the Memorandum. By the impugned amendment dated 19 February, 2005, the position of Ex-Officio Chairman was changed from “Shabhadhipati, Murshidabad Zilla Parishad” to that of Sri Nripen Choudhury in his personal capacity as Chairman.

5. Nripen Choudhury ceased to hold the office of Sabhadhipati on and from 17 August, 1998. Thus, he could not have held the post of the Chairman at the Annual General Meeting of the society which is purported to have been convened on 19 February, 2005. Moreover, the amendment is alleged to have been carried out at an AGM, and not an Extraordinary General Meeting in contravention of the provisions of the West Bengal Societies Registration Act, 1961 (‘the Act’). It is also alleged that the Governing Body had filed a purported Form IV on 24 February, 2002 with the Registrar of

Societies. However, no prior permission from the Registrar was obtained before passing of the impugned resolution as prescribed under section 8(1) read with Rule 12 of the Act and the Rules framed thereunder. In fact, no intimation was sent to the Registrar of Societies. Nor did the Registrar record any such alteration in compliance with section 9(2) of the Act.

6. It is further alleged that Nripen Choudhury had thereafter unlawfully appointed one Deepak Kumar Roy as Chairman of the Society at a Special General Meeting on 17 June, 2014. The second impugned resolution dated 11 June, 2015 pertains to an amendment caused whereby the position of the Ex-Officio Member Secretary of the society which was originally held by the Additional Executive Officer, Murshidabad Zilla Parishad had been altered. It is contended that Dipak Kumar Roy altered the Memorandum by a resolution dated 11 June 2015 whereby, it was decided that the post of the Member Secretary of the society held by the Additional Executive Officer, Murshidabad would be replaced by an elected member of the society. Pursuant to such resolution, a purported Form IV had also been filed with the respondent authorities.

However, no approval as statutorily contemplated had been obtained by the Registrar.

7. It is also alleged that the newly formed management has mismanaged the society. The salaries and provident fund dues of the employees were long withheld and the interests of the students had been compromised on the pretext of financial constraints. Upon receipt of complaints from the students, the District Magistrate investigated into irregularities complained of and reported major discrepancies in the functioning of the society. In order to further investigate the affairs of the society, the Additional Executive Officer, Murshidabad Zilla Parishad had also been requested to look into the irregularities pursuant to which the Additional Executive Officer, Murshidabad Zilla Parishad called upon Dipak Kumar Roy to explain the discrepancies. Although, Dipak Kumar Roy had replied to such queries, the same were found to be unsatisfactory.

8. At a meeting held on 30th September, 2019 the Board of Governors of the society decided to put an end to the prevailing uncertainties concerning the affairs of the society. Diverse issues were discussed at the meeting which include, an enquiry in respect of a

mortgage created of the property belonging to the society at a gross undervalue, the failure to make payments of the Employees Provident Fund dues, unpaid salaries of the employees and an enquiry into funds of the society being transferred to an unknown bank account. Pursuant to the resolution, an Extra Ordinary General Meeting of the society was convened on 24 October, 2019 wherein it was unanimously resolved to take steps to restore the Governing Body in consonance and in conformity with the original Memorandum of the society.

9. In order to reverse the aforementioned discrepancies and to restore the Governing Body in accordance with the original Memorandum, an Extra Ordinary General Meeting was convened on 24th October, 2019 wherein steps had been taken to restore the Governing Body in conformity with the original Memorandum of Association.

10. The respondents contend that the petition is not maintainable since an earlier writ petition being WPA 20956 of 2019 has been filed by the respondent no.4. It is also submitted that the impugned resolutions were justified in view of the exigencies of the situation. Moreover, the impugned resolutions have been repeatedly acted upon. Annual Returns have also been filed with

the Registrar of Societies. The registration of the society has also been renewed from time to time. In any event, both the impugned resolutions were contemporaneously brought to the notice of the Registrar of Societies in compliance with the prescribed formalities and after submission of all necessary forms and payment of requisite fees. It is further contended that no objection was raised by the Registrar of Societies or any other official with regard to such modifications and alterations. The respondents also contend that having accepted and acted upon the alterations, the Registrar of Societies has also renewed the same till date. In any event, the Report filed by the Additional District Magistrate (Murshidabad Zilla Parishad) does not disclose any mismanagement of the society.

11. The relevant provisions of the West Bengal Societies Registration Act, 1961 (the Act) are set out hereunder:

5. Memorandum of Association.- (1) *The Memorandum shall contain, amongst other things, the following particulars, namely: (a) the name of the association, (b) the address of the registered office of the association, (c) the object of the association, (d) the names of the first members of the Governing Body, and (e) the names, addresses and occupations of the signatories to the Memorandum.*

(2) *After registration a society shall not change the Memorandum except in accordance with the provisions of this Act.*

8. Alteration of Memorandum and regulations.- (1)

A society shall not alter its Memorandum except with the previous permission of the Registrar in writing, and the votes of three-fourths of its members.

(2) Before granting permission under sub-section (1), the Registrar shall satisfy himself that the alteration does not make the society ineligible for registration under this Act.

(3) Subject to the provisions of this Act, the Rules and the provisions of the Memorandum a society may, by the votes of three-fourths of the members, alter its regulations.

9. Alterations to be filed.- (1)

A copy of every alteration of the Memorandum and of the regulations shall be filed with the Registrar within thirty days of such alteration.

(2) The Registrar shall, except for special reasons to be recorded by him in writing within thirty days from the date of such receipt, record the alteration and send an intimation of the fact to the society or communicate to the society his objections to such alteration.

(3) An appeal shall lie to the State Government against any objection made by the Registrar and the decision of the State Government on such appeal shall be final.

(4) An alteration shall have effect from the date on which the intimation referred to in sub-section (2) is received by the society or in the event of any objection being raised by the Registrar, from the date on which the State Government allows the alteration on appeal.

17. Annual and other returns to be forwarded to

Registrar.- (1) *Within thirty days after the holding of every Annual General Meeting, there shall be filed with the Registrar-* (a) *a list of the names, addresses and occupations of the members of the Governing Body, the President, the Secretary and of other office-bearers of the society, (b) an*

annual report by the Governing Body on the working of the society for the previous year, (c) a copy each of the balance-sheet and the auditors' report certified by the auditors under sub-section (2) of section 15.

(2) The list and the annual report referred to in clauses (a) and (b) of sub-section (1) shall be certified by the President and the Secretary.

(3) If any change occurs in the composition of the Governing Body or in the holder of the office of the President or the Secretary at any time for any reason whatsoever, such change shall, within thirty days, be notified to the Registrar.

12. I find that both the impugned resolutions have been made in violation of the provisions of the Act. Insofar as the resolution dated 19th February, 2005 is concerned, I find that Sri Nripen Choudhury had ceased to hold office of the Shabhadhipati (Murshidabad Zilla Parishad) on and from 17th August, 1998. Thus, he could not have shown to be Chairman of the society at the purported meeting held on 19th February, 2005. In any event, any such alteration could only have been passed at a duly convened Extraordinary General Meeting. Moreover, there has been no compliance with the requirements of Section 8(1) of the Act read with Rule 12 framed thereunder. There has also been no intimation sent to the society by the Registrar as contemplated

under section 9(2) of the Act. The recording of the alteration is not a ministerial act. In fact, section 9(4) of the Act empowers the Registrar to describe as to whether the alteration is carried on in accordance with the regulations and in case of any discrepancy, the Registrar is empowered to reject the same. (*Jagmohan Dalmiya Vs. The Board of Control For Cricket in India & Ors.* AIR 2008 Cal 227, *Sanjay Budhia Family Trust and Ors. Vs. Tripura Enclave Residents Welfare Association and Ors.* 2014 SCC Online Cal 10464).

13. As far as the impugned resolution dated 11 June, 2015 is concerned, I find that the Chairman shown at the purported meeting is contrary and in violation of the Rules and Regulations of the society. There was also no permission as mandatorily required under section 8 of the Act which had been taken by the society. No intimation was sent to the society by the Registrar regarding alteration of the Memorandum and Regulations as required under section 9(2) of the Act. The requirements as prescribed under the Act are not merely empty formalities rather they must be mandatorily complied with. In view of the aforesaid,

the purported resolution dated 11th June, 2015 is void *ab initio* and in contravention of the Act.

14. The contention of the respondents that all alterations done by the Governing Body of the society were made after complying with the prescribed formalities is also incorrect and contrary to the records. Mere renewal of registration of the society cannot regularise the impugned resolutions. I also find from the Report submitted by the Registrar of Firms and Societies dated 22 January 2020 that, no alteration had been carried out by the Registrar nor have the alternations been carried in compliance with the mandatory provisions of the Act. This is fatal and goes to the root of the challenge made by the petitioners. I also find that the Report submitted by the District Magistrate dated 17 December, 2018 records inter alia that the composition of the Governing Body has been altered in violation of the Memorandum of Association of the society. It is well settled that where a power is required to be exercised in a certain way, it can only be exercised in that manner or not at all.

15. I also find that the pendency of the earlier writ petition being WPA 20956 of 2019 is not a bar to the hearing of this petition.

16. In view of the aforesaid, I find the impugned amendments to be non-est, without authority of law, contrary to the Rules and Regulations of the society.

17. For the foregoing reasons, there shall be an order in terms of prayers (a), (b) and (c) of the writ petition.

18. With the aforesaid directions, WPA 23859 of 2019 stands allowed.

(Ravi Krishan Kapur, J.)

Later:-

After pronouncement of the judgment, it is brought to the attention of this Court that, after the hearing of this matter had been concluded, the private respondents have filed several interlocutory applications which were never brought to the attention of this Court.

In view of the disposal of the writ petition, nothing survives in the interlocutory applications and the same stand dismissed.

(Ravi Krishan Kapur, J.)