

21.04.2023
Court No. 19
Item no.02
CP

WPA No. 9686 of 2023

Sk. Imran & ors.
Vs.
The State of West Bengal & ors.

Mr. Soumen Kr. Dutta
Mr. Abu Sohel
Mr. Sabyasachi Bhattacharjee
Mr. Rajdeep Pramanik

....for the petitioners.

Mr. Uttam Kr. Bhattacharya

....for the respondent no. 3.

Mr. Rajdeep Mazumder
Mr. Pritam Roy

....for the respondent no. 6.

Mr. Lalit Mohan Mahata
Mr. P. B. Mahata

....for the State.

The petitioner no. 1 is an ex-student and the petitioner nos. 2 to 5 are the existing students of Contai Probhat Kumar College. Every year, the students union and some of the ex-students together organize a 'Baishakhi mela' on the college ground of Probhat Kumar College. As a matter of course, the principal of the college had been granting permission to the union to hold the 'mela' for the past years. Normally, the 'mela' lasts for 45 days. In the year 2022, the college had granted permission to the

petitioners to hold the 'mela' , but the chairman of the municipality refused to grant permission. Aggrieved, the petitioners moved WPA 6932 of 2022 before this court. A learned Coordinate Bench of this court, by an order dated April 19, 2022, directed the municipality to grant necessary permission so that the 'mela' could be held on the basis of the permission granted by the college authorities. This order was challenged by the municipality before an Hon'ble Division Bench.

The Hon'ble Division Bench upheld the order of the learned Coordinate Bench by an order dated April 28, 2022, *inter alia*, holding that as the ground belonged to the college as reflected in the record of rights, the college authority had an independent right to decide whether permission would be given to the petitioners or the municipality. The Bench observed that the chairman of the municipality could not resist the 'mela' and withhold his consent when the owner (college) had given the permission. On the basis of the aforementioned order, the 'mela' was held in 2022.

This year, some of the members of the students union applied before the principal, for a permission. Such permission was granted by the principal on February 21, 2023 and thereafter, on February 27, 2023. The documents appear as Annexure P-2 at

pages 25 and 26 to the writ petition. Subsequently, the principal, by a letter dated April 4, 2023 intimated the petitioners that the permission granted earlier on February 20, 2023, stood cancelled. The Zilla Parishad also did not issue the permission/no objection. The Zilla Parishad failed to take steps on the basis of the communication of the SDO. Aggrieved by the aforementioned inaction of the Zilla Parishad, this writ petition has been filed.

The court agrees with the contention of Mr. Dutta learned advocate for the petitioners, that the letter written by the principal on April 4, 2023 suffers from factual discrepancy. According to Mr. Dutta, all other authorities had granted their permission to organize the 'mela', apart from the zilla parishad. That the college authorities could not turn around and take a contrary stand at the fag end, when the 'mela' is likely to commence in a day or two. The 'mela' is a social event, to which all the persons of the locality look forward and is an annual celebration to pay tribute to Gurudev Rabindranath Tagore.

Mr. Majumder, learned advocate appearing on behalf of the college, submits that on the last occasion there were disputes, which led the governing body of the college to differ from the decision of the principal.

To this, Mr. Dutta submits that the president has a vested interest and the decision was not taken by the governing body, but only by the president.

Learned advocate for the zilla parishad submits that the communication of the Sub-Divisional Officer for grant of permission for the 'mela', reached the zilla parishad only on April 19, 2023. The zilla parishad wrote a letter to the college authorities enquiring whether permission had been granted by the college authorities or not. Till date, no response was received from the college. Hence, the zilla parishad cannot be blamed.

Mr. Mahata, learned advocate for the State respondents, submits that the police authorities and the Sub-Divisional Officer had taken necessary steps and the State authorities do not have any further role to play. Further submission is made by the State respondents that the zilla parishad is the final authority to grant the permission under Section 162 of the West Bengal Panchayat Act, 1973.

It appears to the court that on the earlier occasions the principal of the college had granted permission. The principal could not unilaterally decide how to deal with the property of the college unless he was authorized by the governing body to do so. From the permissions granted earlier, it can be safely presumed that the principal was acting on the

basis of decisions of the governing body and the governing body was not unwilling to allow the petitioners to hold the 'mela' from the college compound.

This time, it appears that there is a dispute and the other members of the governing body have an objection. The principal who had given the permission withdrew the permission by a letter dated April 4, 2023 and stated that the matter would be finally decided by the governing body. Till date, the governing body has not decided the issue, although the 'mela' is scheduled to commence from April 24, 2023. This, according to the court is not the proper way to deal with the matter.

If the governing body is of the opinion that the decision should be taken on the basis of a resolution of the governing body, the governing body ought to act promptly and decide the matter in the presence of all its members. There is nothing on record to show that the president had communicated any decision of the governing body or had taken any steps to hold a meeting of the governing body.

However, the letter dated April 4, 2023, will always be subject to the decision of all the members of the governing body to be taken in the presence of a representative of the students who had applied for permission before the principal, by the letter dated

February 8, 2023. All the members of the governing body shall be present, so that a unanimous decision is taken by the governing body in a meeting to be held on April 24, 2023 within 1.00 pm.

At the said meeting, a senior representative of the Purba Medinipur Zilla Parishad, the Sub-Divisional Officer and/or his representative, the Officer-in-Charge of the Police Station and the Chairman of the Contai Municipality, shall be present.

The petitioners will be allowed to make their submissions. The college will encourage the tradition which had been followed since the past few years by taking note of the aims and objects of the 'mela'.

The court is of the view that the college can impose terms and conditions for smooth functioning of the 'mela' and also claim some kind of rent or fees for allowing such 'mela' from its own compound. The college owns the property and some addition to the college funds is always welcome.

The fact that the college is the owner and the governing body represents the college and has the authority to decide the issues relating to the 'mela', is not in dispute. However, as the students are organizing the 'mela', the terms and conditions should not be unreasonable. The organizers of the 'mela' also cannot claim any right in respect of the

compound/land, adverse to the interest of the college.

The apprehension of the petitioners that if the meeting is held on April 24, 2023, the 'mela' cannot commence, is not well-founded. The 'mela' can also be postponed by one or two days as per the final decision of the governing body as long as 45 days tenure is available to the petitioners.

The decision shall be taken by the college and communicated to all. Once the decision is communicated, the zilla parishad will abide by the same. The decision will be communicated by the end of that day, i.e., 24/4/2023.

The college will adopt a resolution taking into consideration all the aspects and lay down the terms and conditions under which such 'mela' can be held for this year and for all succeeding years, so that the interest of the college, the organizers, the people in the locality as also the stall owners are protected. The tradition of the 'mela' should be maintained by observing all the legal requirements and formalities including the law and order and discipline. The same shall not be treated as a political platform as the ground belongs to an educational institution.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)