

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

Present:-

The Hon'ble Justice Aniruddha Roy

W.P.A. 9315 of 2019

Subhas Chandra Patra

Vs.

The State of West Bengal & Ors.

For the Petitioner:

**Mr. Biswarup Biswas, Adv.,
Mr. G. C. Samanta, Adv.**

For the Respondent Nos. 6 to 12:

Mr. Subrata Ghosh, Adv.

For the State:

**Mr. Bhaskar Prasad Vaisya, Adv.,
Mr. Gourav Das, Adv.**

Reserved on:

19.07.2023

Judgment on:

24.08.2023

ANIRUDDHA ROY, J.:

1. This is a hearing matter upon affidavits.

Facts:

2. The petitioner, at all material time had been discharging his duty as **Headmaster** of one **Bora Junior High School** (for short, the school), District Paschim Midnapore. Alleging diverse mismanagement in the affairs of the school, including misappropriation of school funds, the petitioner lodged

complaint against the private respondents before the authority of the school. Criminal complaint was also lodged by the petitioner. The private respondents also resisted the petitioner from attending the school and discharging his duties as Headmaster of the school.

3. Since the school authorities and/or other appropriate authorities did not take any step as per the complaints of the petitioner, the petitioner filed the previous writ petition being **WP No. 23204 (W) of 2017**. A Coordinate Bench by its **order dated September 11, 2017, Annexure P-2 at page 18** to the writ petition, had disposed of the said writ petition with the following observation:

“In view of the aforesaid facts, I observe that the criminal cases instituted at the behest of the parties shall be proceeded with utmost expedition and be concluded at an early date. Parties are at liberty to appear before the criminal court and ventilate their grievances therein in accordance with law. In view of the fact that the petitioner's services has been discontinued by the Managing Committee of the school, no order is passed with regard to his prayer for police protection to ensure him to enter the school premises. It is, however, open to the petitioner to approach the appropriate authority for necessary redress in that regard in accordance with law.

With the aforesaid observations, the writ petition is disposed of.

Since no affidavit-in-opposition has been called for, the allegations made in the writ application are deemed to have been not admitted by the respondents”.

4. Pursuant to the observation made by the coordinate bench as stated above, the petitioner submitted its application before the Jurisdictional District Inspector of Schools (SE) (for short, the DI) with a prayer for resumption of duty of the petitioner at the school, as the petitioner was resisted to discharge his duties

as Headmaster of the school. The DI by its **order dated January 04, 2018, Annexure P-3 at page 20** to the writ petition, directed the Secretary of the Managing Committee of the School to take necessary action or to take redress.

5. The petitioner contended that in terms of the said direction of the DI, the Managing Committee allowed the petitioner to resume his duty and to join the school as Headmaster of the school by making necessary endorsement on **January 05, 2018, Annexure P-4 at page 21** to the writ petition, on a communication of even date made and signed by the petitioner describing himself as Headmaster of the School on the letter head of the school addressed to the Secretary of the School. Since the private respondents continued to act causing disturbance and resistance to run the affair of the school smoothly, the petitioner again made a complaint **dated July 12, 2018** before the DI and the DI by its communication **dated July 18, 2018 Annexure P-6 at page 23** to the writ petition, directed the Secretary of the School to take steps in the matter.
6. The petitioner then by his communication dated July 20, 2018 written on the letter head of the school but signed by the petitioner, made a prayer before the Secretary of the School for allowing the petitioner to join the school, **Annexure P-7 at page 24** to the writ petition. The petitioner, made a further complaint before the Police Authority since the office room of the Headmaster where from the petitioner used to discharge his duties was under lock and key **Annexure P-8 at page 25** to the writ petition. The petitioner further lodged a complaint for the same reason dated January 23, 2019 before the District Administrative

Authority **Annexure P-10 at page 28** to the writ petition. Despite repeated complaints being made by the petitioner, the school authority did not pay any heed thereto and the petitioner was not allowed to join his employment.

7. In view of the above, the petitioner filed the **instant writ petition** with the following prayers:

“a) Writ in the nature of mandamus commanding the respondent particularly the respondent No. 8 to 12 to allow the petitioner to resume and function his duties as headmaster of the said school forthwith.

b) Writ in the nature of mandamus commanding the respondent No.8 to 12 to comply the order of the District Inspector of School (SE) dated 04.01.2018 and 18.07.2018 regarding smooth functioning of the school and to function the duties as Head Master of the said school forthwith.

c) Writ in the nature of mandamus commanding the respondent No.4 being the Officer-in-Charge of Kharagpur Local Police Station to render assistance to the petitioner to function as Headmaster and to resume his duties and to function the administration of the school without any hindrance from the any corner.

d) Writ in the nature of certiorari direction the respondents to produce all records relating to the present can before this Hon’ble Court and upon perusal of such record conscionable justice may be rendered to the petitioner by issuing appropriate writ and/or writs and/or order any orders.

e) Interim order restraining the respondent No.8 to 12 from disturbing the functionary, as well as administrative duties the petitioner being the headmaster office school.

f) Directing the respondent No.4 render police help to the petitioner to resume his duties as headmaster of the said school as well as functioning of the school administrative smoothly.

g) Such other and or further order as to this further court deem fit and proper”.

8. Pursuant to the direction made by the coordinate bench affidavit-in-opposition was filed on behalf of the respondent Nos.6 to 12, affirmed on January 17, 2020. Affidavit-in-reply thereto, was filed by the petitioner, affirmed on March 03, 2020.
9. The writ petition was thereafter taken up for consideration by this Court. While pursuing the writ petition, learned counsel Mr. Biswarup Biswas appearing for the petitioner had relied heavily upon the said document dated **January 05, 2018** on which the endorsement made by one **Uday Das** as the alleged Secretary of the Managing Committee of the School, **Annexure P-4 at page 21** to the writ petition. Learned counsel submitted on the strength of the said document that, the petitioner should have been allowed to join the school as Headmaster and by not allowing the petitioner to do so the relevant school authority had acted illegally and wrongfully and also arbitrarily. Such an arbitrary and wrongful act on the part of the school authority had infringed the valuable right of employment of the petitioner. Per contra, Mr. Subrata Ghosh appearing for the respondent Nos. 6 to 12, the managing committee of the relevant school placed reliance upon the affidavit-in-opposition filed by his clients. Specifically referring to paragraph 7 and 8 from the said affidavit-in-opposition, the learned counsel submitted that, the said document dated **January 05, 2018 Annexure P-4 at page 21** to the writ petition was a **manufactured** and **forged** document. He submitted that, the signature of Uday Das as would appear from endorsement allegedly made by the school authority was not the signature of Uday Das and the same was **forged**. He submitted

that the petitioner had knowingly relied upon this forged document before this Hon'ble Court and made the same as a part of the instant writ petition which was affirmed by the petitioner and, therefore, had practiced fraud upon the Court as also upon the school authority on oath.

10. Considering the submissions recorded above made on behalf of the parties, this Court passed its order dated June 07, 2023 and referred the matter before the **Criminal Investigation Department (CID)**, State of West Bengal to make an enquiry on the issue and directed to file a report thereupon before this Court for the reasons recorded in the said order **June 07, 2023**.
11. The matter then, was taken up for consideration by this Court on July 12, 2023 when the Learned Additional Government Pleader for the State filed the report prepared by CID in a sealed envelope. The envelope was opened and the report was perused by this Court. The court then directed to circulate the said report amongst the parties. The copies of the report accordingly were made over to the learned advocates for the appearing parties including the **learned advocate on record for the petitioner** to enable the petitioner to consider the report and make his submission on the following day.
12. The writ petition was then taken up next on July 19, 2023 when the respective counsel for the appearing parties including the petitioner made their detailed submissions on report and also on the writ petition.

Submissions:

13. Mr. Biswarup Biswas, learned counsel for the petitioner submitted that the petitioner had considered the CID report carefully in its entirety. He submitted

that, the observations made by the CID on the basis whereof it had given its finding in the report were all questions involving disputed facts. He submitted that, without conducting a proper trial, the fact finding enquiry, in the facts and circumstance of the case was not possible and would remain incomplete. It was submitted that, on the basis of such incomplete fact finding enquiry, without conducting a proper trial on the issue, this Court exercising its power under Article 226 of the Constitution of India cannot come to a definite finding that the subject document was forged or a manufactured one.

14. Learned counsel submitted that to take the plea of fraud a clear case of fraud has to be pleaded and demonstrated. If the clear case of fraud is not made out the Court can proceed on fraud. In support, he relied the judgment of the Hon'ble Supreme Court ***In the matter of: State of Maharashtra vs. Dr. Budhikota Subharao, reported at (1993) 3 SCC 339.***
15. Learned counsel for the petitioner submitted that, the fraud had been alleged by the school authority and not by Uday Das, whose signature was allegedly to be forged. Keeping in view the direct interpretation of penal statute in which natural inferences are preferred, the charge of forgery cannot be imposed on a person who is not the maker of the same. Making of a document is different than causing it to be made. In the instant case, even if the document is alleged to be forged, the maker of document was Uday and not the petitioner. Hence the petitioner cannot be charged with the guilt of fraud. In support, he relied upon a decision the Hon'ble Supreme Court ***In the matter of: Sheila Sebastian vs. R. Jawaharaj & Anr., reported at (2018) 7 SCC 581.***

16. Learned counsel then submitted that fraud is proved when it is shown that a false representation has been made knowingly or without belief in its truth or recklessly or carelessly, whether it be true or false. Fraud is conducted either by letters or words. In the present case, the learned counsel for the petitioner submitted that, the specific contention of the petitioner was that the subject document was issued under the seal and signature of the Secretary of the Managing Committee of the School at the relevant point of time. The petitioner cannot be termed to be a party to such alleged fraud. In support, he relied upon the decision of the Hon'ble Supreme Court ***In the matter of: Bhauroo Dagdu Paralkar vs. State of Maharashtra & Ors., reported at (2005) 7 SCC 605.***
17. Mr. Biswas submitted that on the basis of the said document dated **January 05, 2018** the petitioner was allowed to join his service by the Managing Committee of the School, the petitioner should be allowed to resume his employment.
18. Referring to **Annexure 4** to the CID report, Mr. Biswas learned counsel for the petitioner submitted that, the school was recognized on January 13, 2010. Referring to **Annexure 7** to the CID report which is a resolution of the meeting of the Managing Committee dated August 05, 2015, he submitted that, the constitution of the Managing Committee of the School was contrary to the provisions of the relevant Management Rules and as such not in accordance with law and the Constitution of Management Committee being void, the school authority cannot take any advantage of the alleged forgery in respect of the

said document dated January 05, 2018. Referring to **Annexure 8** to the said CID report and the further resolutions he submitted that, the respondent no.8 was not authorized to affirm the affidavit-in-opposition on behalf of the relevant school authority as he was not a member of the Managing Committee at the relevant point of time and, therefore, no reliance can be placed on the affidavit-in-opposition.

19. Mr. Subrata Ghosh learned counsel for the respondent nos. 6 to 12 had referred to the averments made in paragraph 7 and 8 from the affidavit-in-opposition affirmed on January 17, 2020 on behalf of respondent no.6 to 12 and submitted that specific allegation of fraud was pleaded and it was specifically contended by the said respondents that the signature of Uday, appearing on the said subject document dated January 05, 2018 **Annexure P-4 at page 21** to the writ petition was forged and the document was a manufactured one at the instance of the writ petitioner. He submitted that, fraud vitiates everything. Hence the petitioner is not entitled to claim any relief in this equitable proceeding.
20. Mr. Ghosh further submitted that since the subject document dated January 05, 2018 is a forged document and case of the petitioner is on the basis of the said document, he prayed for dismissal of the writ petition summarily.

Decision:

21. After considering the rival contentions of the parties and considering the materials on record, this Court is of the view that the adjudication of the writ petition depends to a large extent on the correctness, authenticity and veracity

of the said document, dated **January 05, 2018 Annexure P-4 at page 21** to the writ petition. If the said document is taken to be true and correct which is heavily relied upon on behalf of the petitioner, then the petitioner would have to be allowed to join the school but if the document is otherwise forged and manufactured, as contended on behalf of school authority, then the petitioner would not be allowed to join the school and in that event the petitioner would have to be held to have adopted a procedure of fraud before this Court.

22. In this situation this Court had obtained a report from CID. On a perusal of the said report the following had appeared to this Court:

.1) CID had examined the Petitioner, Respondents, School Authorities, the concerned District Inspector of Schools and other persons in detail.

.2) On relevant documents were produced by the petitioner, the Teacher-in-Charge of the School and the DI were produced before CID and were scrutinized thoroughly.

.3) Specimen signature was collected from Uday Das in presence of the petitioner, one respondent and other witnesses.

.4) The specimen signature of Uday Das was examined by the handwriting experts.

.5) Despite request the petitioner did not produce the original document dated January 05, 2018.

.6) The statements of the parties to this writ petition were recorded.

.7) Sri. Uday Das who was the Secretary of the previous Managing Committee of the School on examination stated that he attended the

meeting held on August 05, 2015 in which a new Managing Committee was formed and he was removed from the Post of Secretary of the said Managing Committee. He qualified Class-IV and does not know to write in English. He can only write his name in English. He usually signed in Bengali. He resigned from the Post of Secretary in the meeting held on August 05, 2015. Since then he did not engage himself in any affair of the School. He did not sign on any joining prayer of the petitioner dated January 05, 2018. The respondent no.8 submitted a letter dated August 05, 2015 signed by Uday in Bengali. In the said letter Uday prayed for relieving him from the Post of Secretary. The petitioner was requested by CID to produce few original documents which, inter alia, included the said document dated January 05, 2018 but the petitioner failed to produce original documents.

.8) Annexure 18 to the said CID report was a letter signed by the petitioner dated June 21, 2023, wherefrom it appeared that the petitioner informed the CID that the original document dated January 05, 2018 could not be produced by him and whatever document he had claimed to be original dated January 05, 2018 was submitted before CID.

.9) The specific finding of the CID was that the petitioner failed to produce the original letter dated January 05, 2018 but produced other two original letters one dated January 05, 2018 (Annexure 19 and 20 to the CID report) and July 20, 2018 (Annexure 21 to the CID report)

which according to the CID were different from the letters submitted in the writ petition.

.10) The sample handwriting of Uday was taken in presence of the petitioner, respondent no.9 and other witnesses present.

.11) The documents mentioned in paragraph 5,16 of the CID report which included the copy of the letter dated January 05, 2018 Annexure P-4 at page 21 to the writ petition (Marked Q1 for Expert) were produced before the Question Document Examination Bureau (QDEB), CID, West Bengal for comparison of the Handwriting of Uday Annexure 25 to the CID report. The finding of the said examination bureau was that in absence of the original letter dated January 05, 2018 the opinion could not be given but the Bengali signature of Uday present in the resignation letter dated August 05, 2015 was executed by Uday (Referred to Para 5.16 from the CID report).

.12) Considering everything as mentioned in the said CID report the Investigative Agency came to a finding that the signature present in the document dated January 05, 2018, Annexure P-4 at page 21 to the writ petition was not executed by Uday.

23. On a careful scrutiny of the said report filed by CID, it appeared to this Court, despite requests the petitioner failed to produce the **original document dated January 05, 2018, Annexure P-4 at page 21** to the writ petition. The expert upon examination of the copy of the said document and upon examination of Uday Das came to a finding that the document was not signed by Uday Das.

Relying upon the said document the petitioner has built up its case in the writ petition. The original document should be and supposed to be in the custody of the petitioner and in absence of the original being produced by the petitioner the ***Adverse Presumption*** goes against the petitioner. Once the expert has opined that the alleged signature of Uday Das appearing on the document was not the signature of Uday Das, though the same might give rise to a triable issue, but would definitely create a doubt in the mind of the Court that fraud might have been perpetrated and practiced upon this Court by using the said document in the writ petition which was verified on oath by the petitioner knowing that the document was forged. Once the question of forgery arose in the mind of this Court, as in the facts of this case, this Court, as of the view that, it is a fit case where a properly constituted criminal trial is required to be instituted in accordance with law.

24. The contention of the petitioner that by alleging fraud the respondents had raised a triable issue before this Writ Court, the same at best can be sent for conducting a trial on the disputed questions of facts and till the time a conclusive decision comes on trial the writ petitioner is maintainable. This cannot be the law, in the firm opinion of this Court. This Court while exercising its jurisdiction under Article 226 of the Constitution of India, it exercises its equitable jurisdiction. The moment a cloud is created in the mind of the Writ Court as to the authenticity and existence of a document, which is the sole basis of the writ petition and that to with the allegation of fraud against the petitioner practiced on Court no equity shall be exercised in favour of the

petitioner. It is settled that he who seeks equity must apply before the Court of equity with clean hands. The Court of equity cannot and should not indulge the applicant who, prima facie, applies with an unclean hands before it.

25. An expert opinion is always open for scrutiny strictly in accordance with law and cannot be used as a conclusive evidence until the opinion is proved to be a testimony founded on a conclusive proof. It is equally settled that when a dispute as regards the authenticity of a document as to the signature or handwriting appearing thereon is questioned, the Court not being an expert on the subject is free to take assistance from the expert and the Court may form its prima facie view on the basis of such experts opinion, as in the facts of this case.
26. From the averments made in the affidavit-in-opposition filed on behalf of respondent nos. 6 to 12, it appears that a clear case of fraud was made out by the said respondents and it was specifically contended that the signature of Uday appearing on the document dated January 05, 2018 was forged. In the affidavit-in-reply the petitioner did not deny such case of the respondents as it is required to be denied in law specifically ***In the matter of: Sheila Sebastian (supra)***, was a judgment render in a criminal appeal in which the High Court had held that the conviction of the accused was not sustainable. So an appropriate trial was held in which conviction was directed. Such is not the case in the facts of the instant case and the stage of conviction has not arrived in this case. ***In the matter of: Dr. Budhikota Subharao (supra)***, a case of fraud was alleged against the persons who sought for freedom fighters' pension

but were not even born at the time of freedom fighting. The facts are not alike in the instant case. In the instant case, the petitioner seeks to take advantage of a document being the sole basis of his writ petition. The authenticity of such document is under challenge to be a result of fraud allegedly practiced by the petitioner. Inasmuch as, in none of these matters as were referred to on behalf of the petitioner the Court sought for any expert's opinion. In the facts of this case, the Court has obtained an expert's opinion and on the basis of such expert's opinion this Court in exercise of its writ jurisdiction being an equitable jurisdiction proceeds to deal with the writ petition. Accordingly, the ratio laid down in all the above cases relied upon on behalf of the petitioner would render no assistance to the petitioner in the facts of the instant case.

27. In the light of the above discussions, this Court is of the firm view that, this Court will not and should not exercise its equitable jurisdiction when a prima facie view on fraud has been opined by the expert. It is a fit case, since allegation of fraud is there against the petitioner who according to the respondents knowingly manufactured a document by forging the signature of Uday Das and knowing that the document being forged has used it before this Court on oath and thereby practiced fraud upon this Court and the expert's opinion prima facie supports such contention, a properly constituted criminal trial is required to be initiated.
28. For the foregoing discussions and reasons the CID through its appropriate authority is directed to lodge the necessary FIR positively within a period of four weeks from the date of communication of this order by the Learned

Additional Government Pleader through whom the CID has filed its report. The CID then shall go on investigation on the issue and the State shall take all further steps in the matter strictly in accordance with law to come to a reasonable conclusion on the issue after a proper criminal trial being held strictly in accordance with law and the criminal case shall arrive its logical conclusion as expeditiously as possible before the Jurisdictional Criminal Court not later than one year from the date of initiation of the said case. The Jurisdictional Criminal Court shall proceed with the trial without being influenced by any observation made herein.

29. After completion of the criminal trial, if the result goes against the petitioner then the jurisdictional criminal court who shall conclude the trial shall refer the matter before the jurisdictional magistrate to take cognizance against the petitioner for **perjury** and such proceeding shall come to a logical conclusion by the jurisdictional magistrate as expeditiously as possible and positively within a period of one year from the date of reference before it.
30. In view of the foregoing discussions, reasons and with the above observations, this writ petition **WPA 9315 of 2019 stands dismissed**, without any order as to costs.
31. In the event, the petitioner is acquitted in the criminal trial, he shall be at liberty to avail of his remedy on the self same issue in accordance with law.

(Aniruddha Roy, J.)