

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 15772 of 2025
With
CAN 1 of 2025

Reserved on : 09.09.2025
Pronounced on: 15.09.2025

Nilanjana Maity

...Petitioner

-Vs-

The State of West Bengal & Ors.

... Respondents

Present:-

Mr. Billwadal Bhattacharyya
Mr. Firdous Shamim
Ms. Gopa Biswas
Ms. Megha Dutta
Mr. H.Z. Molla
Mr. Tamoghna Pramanick

...for the Petitioner

Mr. Supriyo chattopadhyay
Ms. Rajyasree Mukherjee

... for the State

Mr. Subir Sanyal
Mr. Dwarkanath Mukherjee
Mr. Kamal Mishra
Mr. Ratul Biswas
Mr. Pratap Sanfui

... for the DPSC, Purba Medinipur

Rajarshi Bharadwaj, J:

1. By this writ application under Article 226 of the Constitution of India, the petitioner, an Assistant Teacher presently posted at Kasba Sitala Primary School, Purba Medinipur, challenges the order of transfer dated 07.07.2025, issued by the Secretary, District Primary School Council, Purba Medinipur being respondent no.9 (herein referred to as the “the Council”), whereby she is sought to be transferred to Argora Primary School (Patashpur North Circle) on the ground of “surplus teacher” adjustment.

2. The facts in a nutshell are that the petitioner was appointed as Assistant Teacher under the General Category in Chatla Haripara Primary School (Egra West Circle, Purba Medinipur) by appointment letter Memo No. 3586/Appt./T dated 19.01.2014. The appointment conditions included probation for two years, with the service being temporary and liable to termination with notice. Upon receiving the appointment order, the petitioner duly joined her post on 20.01.2014, submitted her joining letter and fulfilled the requisite formalities. She continued to discharge duties diligently at the said school.

3. Facing genuine difficulties in attending the earlier school, the petitioner applied for a transfer under Rule 4(b) of the West Bengal Primary Education (Transfer of Teacher) Rules, 2002. The Council allowed the transfer through Memo No. 4999/5/A.T. dated 16.01.2017, posting her to Kasba Sitala Primary School (Egra North Circle). She duly joined the new school on 16.02.2017.

4. Subsequently, on 03.10.2024, another transfer order (Memo No. 2092/ES) directed her temporary deployment to Jagannathpur P. Primary School, which she challenged by WPA 6211 of 2025. By order dated 25.03.2025, the Hon’ble Court directed the production of relevant records regarding this decision. Eventually, on 02.07.2025, the Council, via Memo

No. 1256/4/ES, cancelled the earlier transfer order, specifically declaring it redundant and nullifying its effect.

5. On 07.07.2025, the Secretary, Council, issued Memo No. 1285/1(6)/ES, transferring the petitioner on the purported ground of surplus staff at her present posting, transferring her to Argora Primary School, categorised as a deficit school per Rule 25 of the Right of Children to Free and Compulsory Education Rules, 2009 read with Transfer Rules, 2002.

6. The petitioner states that the new school is at a considerable distance from her residence, causing hardship and inconvenience and that the transfer was made without reference to seniority or preparation of a panel of surplus teachers. She also notes that on the same date, the Council sought updated PTR (pupil-teacher ratio) data from all circles (Memo No. 1277/ES) and alleges her transfer was issued prior to the completion of any rational exercise, thus rendering the order arbitrary and mala fide. The order required her to join within seven days and she asserts that unless stayed, she would suffer irreparable loss owing to which the present petition has been filed.

7. Learned Counsel appearing for the petitioner submits that the impugned transfer is wholly arbitrary, disproportionate, vitiated by mala fide and in flagrant disregard of the provisions of the West Bengal Primary Education (Transfer of Teachers including Head Teachers) Rules, 2002. It is contended that the authority to effect transfers lies solely with the District Primary School Council as a duly constituted corporate body under Section 37 of the West Bengal Primary Education Act, 1973. The Secretary, who is not even a member of the Council within the meaning of Section 53(3) of the Act, has no such authority and could not have acted unilaterally. In the present case, no functional Council exists in Purba Medinipur, its tenure having expired in 2015 upon lapse of the notification dated 21.02.2011 and no valid reconstitution having taken place thereafter under Sections 40 and 41 of the said Act. As held in **S.K. Mohmud Hossain & Ors. v. State of West Bengal & Ors.** reported in **AIR 2010 Cal 121**, Section 42(2) cannot be

read to create a perpetual or indefinite continuance of the Council beyond its four-year tenure. Accordingly, the Secretary's decision is clearly taken without jurisdiction and is void ab initio.

8. The petitioner further submits that the impugned order is demonstrably vindictive. Earlier, by Memorandum No. 2092/ES dated 03.10.2024, the Chairman of the Council had issued a transfer order against her which was challenged in W.P.A. No. 6211 of 2025 before this Hon'ble Court. Pursuant to the Court's intervention, Memorandum No. 1256/4/ES dated 02.07.2025 was issued, whereby the earlier transfer order stood cancelled as redundant. Barely five days thereafter, on 07.07.2025, the impugned transfer order was issued afresh by the Secretary. This sequence of events, in the respectful submission of the petitioner, demonstrates mala fides, vindictiveness and a deliberate overreach of judicial authority already exercised in her favour.

9. On the merits of the decision, it is contended that no panel of surplus teachers was prepared, nor was seniority taken into account. The established statutory practice that the junior-most teachers be transferred in cases of surplus was wholly disregarded. To the contrary, the petitioner's current institution, Kasba Sitala Primary School, accommodates 120 students with 7 teachers, while Argora Primary School, to which she has been transferred, houses only 41 students with 2 teachers. This disproportionality defies rational basis and undermines the claimed objective of maintaining teacher-student ratios.

10. The process is equally flawed. On the very date of issuance of the impugned transfer order, the Chairman of the said DPSC sought updated pupil-teacher ratio (PTR) data from all Sub-Inspectors of Schools. Issuing a transfer order prior to conclusion of such a data-gathering exercise renders the exercise futile and betrays absence of transparency or objective decision-making. The impugned order, being a non-speaking one bereft of reasons, is liable to be held as violative of the principles of natural justice.

11. It further requires emphasis that such prolonged non-functioning of the Council is not a situation peculiar to Medinipur alone. The District Primary School Council at Purba Bardhaman stands on an identical footing. As reflected in the official report of its chairperson, no meeting of the Council has been convened after 24.06.2015 and none was held even in the year 2024. This persistent administrative inertia strikes at the very root of effective policy implementation and corrodes institutional accountability. In such circumstances, exercise of statutory power of transfer, without the benefit of deliberative functioning of the Council, only accentuates the arbitrariness of the action. This reveals systemic governance failure necessitating urgent corrective measures at both the executive as well as supervisory levels.

12. Furthermore, Allegations of perjury levelled against the petitioner by the respondents are also baseless. The petitioner was medically unfit, as corroborated by documentary medical evidence and had been transported by special vehicle solely for filing the earlier writ petition.

13. In view of these facts and legal principles, the impugned transfer order dated 07.07.2025, being Memorandum No. 1285/1(6)/ES, stands vitiated by lack of jurisdiction, arbitrariness and hostility to constitutional guarantees under Articles 14, 19(1)(g) and 21. It represents a colourable exercise of power, issued for collateral purposes, in violation of statutory mandates and settled judicial interpretation. Accordingly, the petitioner submits that the impugned transfer order deserves to be set aside and quashed.

14. Learned Counsel appearing for respondent nos.7-10 submits that the West Bengal Primary Education Act, 1973 came into force with effect from 02.07.1990. Upon the coming into force of the said Act, Section 37(1) thereof mandated the establishment of a District Primary School Council for each district by notification issued by the State Government in the name of the respective district.

15. In pursuance of the said statutory mandate, in the year 1991, the State Government, by issuing notifications, established the Councils for each

District comprising the members as enumerated in Section 37(2) of the Act. It is further submitted that by virtue of Section 37(3), each District Primary School Council is a body corporate with perpetual succession and a common seal, with powers to acquire, hold and dispose of property, as well as to enter into contracts and perform all acts necessary for giving effect to the provisions of the said Act.

16. It is further submitted by the learned Counsel that in the case of ***Income Tax (TDS) Kanpur and another v. Canara Bank*** reported in **(2018) 9 SCC 322**, it was held:

"8. A corporation is an artificial being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. In addition, it possesses the capacity as such legal entity of taking, holding and conveying property, entering into contracts, suing and being sued, and exercising such other powers and privileges as may be conferred on it by the law of its creation just as a natural person may. The following definition of corporation was given by Marshall, C.J. in the celebrated Dartmouth College cases: (SCC OnLine US SC para 106)

'106. A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property, without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being.'

17. The respondents contend that the legal fiction created by Section 37(3) makes it abundantly clear that once constituted, such a body corporate

continues to exist so long as the parent statute remains in force. The body corporate itself does not and cannot come to an end merely because of a change, lapse or expiry in the tenure of its members. Members may demit office by efflux of time or otherwise, but the corporate personality of the Council survives uninterrupted, being a creation of statute.

18. It is further pointed out that the Council, under Section 37(2), consists of four categories of members, namely, (i) members appointed by the State Government, (ii) members nominated by the State Government and other authorities, (iii) members elected by different constituencies and (iv) ex-officio members. In cases where elections are not duly conducted in any category, Section 40(1) empowers the State Government to appoint persons qualified for election, thereby ensuring continuity of the Council's composition and functioning.

19. Section 42(1) of the Act, which prescribes that the term of an elected, nominated or appointed member shall be four years from the date of publication of his or her name in the Gazette Notification under Section 41. Thus, the statute fixes the tenure of members and not of the Council itself. This distinction is of material significance as the Legislature, in its wisdom, consciously refrained from fixing any term for the corporate body of the Council, recognising that a statutorily established body corporate continues in perpetuity until the enactment itself stands repealed.

20. Reliance is further placed on Section 42(2) by the Learned counsel, which provides that a Council shall continue to hold office, notwithstanding the expiration of its term, until a newly formed Primary School Council enters office. The respondents submit that the phrase "*expiration of its term*" in this context refers not to the tenure of the Council as an institution which in law has no such term, but to the tenure of its members as laid down under Section 42(1). Hence, the legislative scheme ensures that even where the tenure of members has expired, the Council, with its existing members,

continues to hold office and discharge statutory functions until a new set of members is duly elected, nominated or appointed, as the case may be.

21. Accordingly, through a conjoint reading of Sections 37, 40 and 42, the legislative intent stands clarified that while members may change periodically, the Council as a statutory body corporate does not lapse or dissolve. In the present case as well, the Council is continuing validly with its existing members under the express protective umbrella of Section 42(2) of the Act of 1973 and is competent in law to discharge its obligations and functions.

22. Thus, respondent nos. 7-10 submit that the existence, validity and continuity of the District Primary School Council cannot be doubted, as the same derives its life and authority directly from the statute and continues by operation of law, irrespective of the expiry of terms of individual members.

23. The Learned Counsel appearing for the respondent no.8 specifically challenges the procedural validity of the petitioner's conduct, presenting the primary argument that questions the legal propriety of the steps taken by the petitioner. The respondent contends that the petitioner was on certified medical leave on 14.07.2025, the very day the present petition was purportedly affirmed, supposedly under instruction for absolute bed rest by her doctor. This, in the respondent's view, raises doubts as to the veracity of either the petition's affirmation or the medical certificate and is characterized as perjury deserving of judicial condemnation.

24. The respondent additionally contends that the petitioner has a pattern of approaching the Court to resist compliance with administrative transfers and related directives. On the institutional front, the respondent asserts the continued legal existence and functionality of the District Primary School Council by virtue of its statutory constitution under the West Bengal Primary Education Act, 1973, and subsequent notifications. Therefore, the respondent maintains that the Secretary's action in issuing the transfer order is neither ultra vires nor unauthorized. The respondent relies on official notifications

and records to establish the ongoing authority of the Council and its officers, although these are not specifically appended or referenced in detail within the affidavit. Therefore, the respondent urges the Court to dismiss the petition for want of merit and to uphold the administrative prerogative exercised through the impugned transfer order.

25. In reply to the submissions made by the respondent, the Learned counsel for the petitioner submits that to justify the action, reliance has been placed by the respondents on alleged “*emergency powers*” of the Chairman under Section 53(2) of the Act. Such a contention, however, is wholly misplaced. The impugned order nowhere invokes or records such powers or any emergent reason. As held in ***Sudipta Ghosh v. State of West Bengal & Ors.*** reported in **(2013) 3 Cal LT 618**, transfer of a teacher does not qualify as an emergency warranting exercise of Section 53(2) powers, unless an exceptional situation is expressly pleaded and recorded. Similar is the dictum in ***Dipika Bala Biswas v. State of West Bengal & Ors.*** reported in **2022 SCC OnLine Cal 2327**, wherein the Hon’ble Division Bench reaffirmed that the power of transfer of approved primary teachers vests exclusively in the District Primary School Council under Rules 4 and 5 of the 2002 Rules. Both the Chairman and the Secretary are expressly prohibited from exercising such powers singly, being authorities distinct from the Council per se. The concept of “*staff*” under Section 53(3) cannot by any means extend to teachers, who are separately defined under the statute.

26. Having heard the learned counsel for the parties and upon perusal of the pleadings and materials on record, this Court is to decide whether the impugned order of transfer dated 07.07.2025 bears the imprimatur of lawful authority. The fulcrum of the petition lies in the proper construction of Sections 37, 40, 41, 42 and 53 of the West Bengal Primary Education Act, 1973, read conjointly with the West Bengal Primary Education (Transfer of Teacher) Rules, 2002 and the judicial precedents governing the scope of power of the District Primary School Councils vis-à-vis their functionaries.

27. Sections 37, 40 and 41 of the West Bengal Primary Education Act, 1973 mentions:

“37. District Primary School Councils.

(1) The State Government shall, by notification, establish for each district excluding, [the hill areas and] [Words inserted by W.B. Act 18 of 1988.] the areas included in Calcutta [* * * * *] [Words 'and specified municipality,' omitted by W.B. Act 47 of 1980.] with effect from such dates as may be specified in the notification, a District Primary School Council bearing the name of the district [and, for the sub-division for Siliguri, Siliguri Primary School Council:] [Words inserted by W.B. Act 13 of 1997.]

[Provided that the State Government shall, by notification, establish for the sub-division of Siliguri (excluding such mauzas of the sub-division as are comprised in the hill areas), with effect from such date as may be specified in the notification, a Primary School Council bearing the name of the sub-division.] [Proviso inserted by W.B. Act 18 of 1988.]

(2) A District Primary School Council shall consist of the following members, namely :-

(1a) [the Chairman, who shall be appointed by the State Government;] [Clause (1a) inserted by W.B. Act 10 of 1999.]

(a) the District Inspector of Schools, in charge of primary education;

(b) the District Special Officer, Scheduled Castes and Tribes Welfare or where no such officer is posted, the District Tribal Welfare Officer;

(c) the District Social Education Officer;

(d) one member for each sub-division, elected in the prescribed manner by the members of [Panchayat Samitis within the sub-division from amongst themselves] [Words substituted for the words 'Anchal Panchayats within the sub-divisions' by W.B. Act 47 of 1980.]:

Provided that the number shall in no case be less than three;

(e) three members, elected in the prescribed manner by the [(Councilor of municipal areas) within the district from amongst themselves] [Words 'municipalities within the district from amongst themselves' first substituted for the words 'non-specified municipalities within the district' by W.B. Act 47 of 1980, then the words within first brackets substituted for the words 'Commissioners of municipalities' by W.B. Act 13 of 1997.];

[* * * * *] [[Proviso omitted by W.B. Act 10 1999, which was as under :-

'Provided that in the district of 24-Parganas, four members shall be elected by such municipalities;']]

(f) three members, elected in the prescribed manner by the members of Zilla Parishad, [from amongst themselves] [Words inserted by W.B. Act 47 of 1980.];

(g) one teacher of a [Primary Teachers' Training Institute] [Words substituted for the words 'Junior Basic Training Institution' by W.B. Act 19 of 1994.] in the district, elected in the prescribed manner by the teachers of such institutions in the district;

(h) three teachers [* * * * *] [Words 'of whom one shall be a woman' omitted by W.B. Act 47 of 1980.] elected in the prescribed manner by the teachers of primary schools in each sub-division from amongst themselves:

[* * * * *] [[Proviso omitted by W.B. Act 13 of 1997, which was as under :-

'Provided that the member shall in no case be less than six;'.]]

[Provided that the number shall in no case be less than six;] [Proviso inserted by W.B. Act 10 of 1999.]

(i) [not exceeding fifty per cent of the members of the West Bengal Legislative Assembly, subject to a maximum of six, not being ministers-, representing the constituencies comprised within the territorial jurisdiction of the district concerned, elected from amongst themselves in the manner prescribed; [[Clauses (i) and (ii) first substituted for original clause (i) by W.B. Act 47 of 1980, then proviso to clause (i) omitted by W.B. Act 18 of 1988, and finally, present clause (i) substituted by W.B. Act 13 of 1997. Previous clauses (i) and (ii) was as under :-

'(i) six members of the West Bengal Legislative Assembly, not being Ministers, elected in the prescribed manner by the members of the Legislative Assembly, representing the constituencies comprised within the territorial jurisdiction of the district concerned, from amongst themselves;'.]]

(ii) one member from the staff of the Primary School Council elected in the prescribed manner by the members of the staff of the District Primary School Council from amongst themselves;]

(j) [six persons interested in education, nominated by the State Government of whom - [[Clause (j) substituted by W.B. Act 47 of 1980, which was earlier as under :-

'(j) three persons interested in education, nominated by the State Government'.]]

(i) one shall be a women;

(ii) one shall be a member of a Scheduled Caste;

(iii) one shall be a member of Scheduled Tribe;

(iv) one shall be a member of linguistic minority;

(v) one shall be a college teacher;

(vi) one shall be a secondary school teacher.]

(k) [the Chairman to be appointed by State Government.] [Clause (k) inserted by W.B. Act 19 of 1994.]

(2A) [The Siliguri Primary School Council for the sub-division of Siliguri shall consist of the following members, namely] [Sub-Section (2A) inserted by W.B. Act 13 of 1997.] :-

(1a) [the Chairman, who shall be appointed by the State Government;] [Clause (1a) inserted by W.B. Act 10 of 1999.]

(a) the District Inspector of Schools in charge of primary education;

(b) the Special Officer, Scheduled Castes and Tribes Welfare or, where no such officer is posted, the Tribal Welfare Officer-in-charge of the matters concerning the Scheduled Castes and the Scheduled Tribes of the sub-division;

(c) the District Social Education Officer;

(d) three members elected in the prescribed manner by the members of the Panchayat Samitis within the sub-division from amongst themselves;

(e) two members elected in the prescribed manner by the Councilors of the municipal areas within the sub-division from amongst themselves;

(f) two members elected in the prescribed manner by the members of the Mahakuma Parishad for the sub-division from amongst themselves;

(g) one teacher of a Primary Teachers' Training Institute in the subdivision elected in the prescribed manner by the teachers of such Institutes in the sub-division;

(h) three teachers elected in the prescribed manner by the teachers of primary schools in the sub-division from amongst themselves;

(i) two members of the West Bengal Legislative Assembly, not being Ministers, elected in the prescribed manner by the members of the Legislative Assembly, representing the constituencies comprised within the territorial jurisdiction of the sub-division, from amongst themselves;

(j) one member from the staff of this Primary School Council elected in the prescribed manner by the members of the staff of the Siliguri Primary School Council from amongst themselves;

(k) four persons interested in education nominated by the State Government, of whom -

(i) one shall be a woman,

(ii) one shall be a member of the Scheduled Caste or Scheduled Tribe,

(iii) one shall be a member of [linguistic minority community,] [Words substituted for the words 'linguistic minority,' by W.B. Act 10 of 1999.] and

(iv) one shall be a secondary school teacher.

(3) A District Primary School Council [or, as the case may be, Siliguri Primary School Council] [Words inserted by W.B. Act 13 of 1997.] shall be a body

corporate with perpetual succession and a common seal, shall be entitled to acquire, hold and dispose of property, to enter into contracts and to do all other things necessary for the purpose of this Act, and shall by its corporate name sue and be sued.

40. Appointment in default of election.-

(1) If by such date, as may be fixed by the State Government in this behalf, any of the authorities fails to elect a member or members as provided in [section 37 or section 38], the State Government shall appoint member or members qualified for election by such authority.

(2) A person appointed under this section shall be deemed to be a member of the Primary School Council duly elected by the authority concerned.

41. Publication in the Official Gazette.

The name of every member [elected, nominated or appointed under section 37 or section 38] [* *] or appointed under section 40 as a member of a Primary School Council shall be published by the State Government in the Official Gazette as soon as may be after his election, nomination or appointment, as the case may be.”*

28. The records reveal that the District Primary School Council, Purba Medinipur, was last constituted pursuant to notification dated 21.02.2011. Its statutory tenure of four years expired in 2015, but no election or reconstitution of members has taken place thereafter under Sections 40 and 41 of the West Bengal Primary Education Act, 1973. Consequently, since 2015, no legally functional Council exists in the district.

29. The principle that no person can be bound by a law not duly promulgated or published is a settled requirement under the principle of natural justice. Primary legislation carries inherent publicity through democratic debate, but delegated legislation or executive orders acquire binding character only upon due authentication and promulgation by recognised means such as publication in the Official Gazette. In ***Gulf Goans Hotels Co. Ltd. v. Union of India*** reported in **(2014) 10 SCC 673** the Supreme Court underscored that “law must possess a certain form; contain a clear mandate/explicit command which may be prescriptive, permissive or penal and the law must also seek to achieve a clearly identifiable purpose.

While the form itself or absence thereof will not be determinative and its impact has to be considered as a lending or supporting force, the disclosure of a clear mandate and purpose is indispensable". Applying this standard, the Court invalidated departmental directives enforced on the ground that they lacked due publication and could not bind citizens, reiterating that absent authentication under Article 77 of the Constitution of India, such directives are without legal force.

30. Equally, in ***State of M.P. v. Shri Ram Ragubir Prasad Agarwal*** reported in **(1979) 4 SCC 686**, the Court expounded the meaning of "publish" by observing that *"offering to public notice, or to make it accessible to public scrutiny; making known of something to people for a purpose"*. The Court rejected the argument that mere internal communication suffices, setting down the principle that accessibility to the public is the essence of publication.

31. This requirement of publication is not confined to delegated legislation. Section 41 of the West Bengal Primary Education Act, 1973 mandates that the State Government *"shall establish by notification in the Official Gazette a District Primary School Council for every district"*. The use of "shall" renders the issuance of a Gazette Notification a jurisdictional fact and the constitutive act that breathes life into the statutory corporation. Without such notification, any claim of lawful existence is untenable, as *"a legal fiction cannot operate in emptiness"*. The Gazette Notification is thus not a procedural formality but the very source of corporate legal personality. The ratio that crystallises is therefore clear, enforceability of law and the existence of statutory corporations are conditioned equally on the fulfilment of the mandate of publication, for secret or unpublished laws and corporations without gazetted notification are, in the eyes of law, non est.

32. Section 37(3) declares that the District Primary School Council, once constituted, shall be deemed a body corporate with perpetual succession. However, fidelity to basic principles of corporate personality compels the

conclusion that the conferment of perpetual succession attaches to the juridical entity only so long as such entity has its legal constitution grounded in a valid notification and composition of members. A legal corporation cannot be presumed to survive in vacuum when its basic composition mandated by law has lapsed and not been replenished in the manner prescribed under Sections 40 and 41. In this respect, the ***doctrine of lifting the corporate veil*** is most apt. While ordinarily incorporation creates a separate legal entity distinct from its members, this separate personality is always subject to compliance with statutory conditions. The veil may be pierced where the corporate form is used as a cloak to mask non-compliance or continued existence without lawful constitution. This principle has been repeatedly recognised in Indian jurisprudence, in cases like ***State of U.P. v. Renusagar Power Co.*** reported in ***(1988) 4 SCC 59***:

“66. It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties...”

33. Thus, it must be examined whether the statutory mandate for valid reconstitution through Gazette notification and proper appointment of members has in fact been fulfilled. What the respondents seek to project as continuous functioning of a statutory corporation is, in substance, individuals without lawful authority assuming roles of Chairman or Secretary and purporting to act on behalf of a non-existent collectivity. This Court is duty-bound to look behind the veil of fictitious corporate continuity to ascertain the legal reality and ensure that acts purportedly done in the name of the Council are not ultra vires and devoid of jurisdiction.

34. The argument on behalf of the respondents that Section 42(2) permits an indefinite continuance of the Council beyond the tenure of its members cannot be sustained. The provision, properly construed, operates only as a transitory arrangement to obviate an administrative vacuum until new

members assume office. To read the provision as conferring perpetual life notwithstanding non-constitution would be to render Section 41 nugatory and to enable the State to indefinitely postpone democratic reconstitution of these local bodies. This Court, in **S.K. Mohmud Hossain (supra)** has already ruled that Section 42(2) cannot be interpreted to justify an eternal continuance of an expired body. Such an interpretation would be violative of the doctrine of *Ut res magis valeat quam pereat*, for it would defeat the very purpose of periodic elections and appointments envisaged in the said Act.

35. Turning to the competence of the officer who issued the impugned order, the statutory scheme leaves no scope for ambiguity. The power to effect transfer of primary school teachers vests exclusively in the District Primary School Council as a duly constituted authority acting under the 2002 Rules. Neither the Chairman nor the Secretary, in their personal capacity, are conferred such power. Section 53(3), in fact, expressly clarifies that the Secretary is a staff officer of the Council and not a member thereof. A delegate cannot further delegate, therefore, unless specifically empowered by statute, an individual staff member cannot assume substantive powers that are vested in the Council as a collective body.

36. The justification proffered by respondents under Section 53(2) relating to emergency powers of the Chairman also collapses upon scrutiny. Long-standing judicial authority, including **Sudipta Ghosh (supra)** and **Dipika Bala Biswas (supra)**, make it clear that routine or even inconvenient transfers do not rise to the level of emergencies contemplated by Section 53(2). The doctrine of necessity or emergent power must be strictly construed; otherwise, it would become a warrant for arbitrary exercise. In the present case, not only does the impugned order make no reference to such power, but also the very arbitrariness evident in bypassing seniority and issuing the order even before completing a rational PTR study negates any claim of emergent compulsions.

37. The facts also reveal colourable exercise of power. The petitioner had only days before been granted relief by this Court by quashing a similar transfer order. Within a span of five days, the Secretary issued a fresh transfer order founded on the same misapprehension of authority. Such conduct demonstrates mala fides and an attempt at overreaching judicial pronouncement. The absence of reasons in the order, in violation of the cardinal principle of natural justice, renders the order void on that additional ground.

38. It is trite that administrative orders must be anchored in statutory competence, reason and good faith. Where an order is issued by an authority lacking inherent jurisdiction, premised on provisions misconstrued beyond their plain meaning and manifesting mala fide intent, such order is incurably void ab initio. Articles 14, 19(1)(g) and 21 of the Constitution stand violated when arbitrary state action penalises an employee without lawful justification.

39. Therefore, the statutory command of Section 37 being mandatory, absence of valid Gazette reconstitution leaves the District Primary School Council without legal existence in Purba Medinipur. The doctrine of lifting the corporate veil compels recognition that individuals describing themselves as functionaries cannot, in the teeth of law, bind a non-existent statutory corporation. The Secretary, not being a member, was devoid of competence to issue the impugned transfer order. The reliance upon Section 42(2) and Section 53(2) is misconceived, judicial precedent foreclosing such interpretation. Moreover, the sequence of repeated transfer orders manifests mala fide and arbitrariness. Therefore, the impugned order dated 07.07.2025 cannot be permitted to stand.

40. Accordingly, the writ petition is allowed. The impugned transfer order dated 07.07.2025, is hereby quashed and set aside. The respondents are directed to allow the petitioner to continue at Kasba Sitala Primary School, Purba Medinipur, without prejudice to her service rights. All pending applications are accordingly disposed of.

41. There shall be no order as to costs.

42. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(RAJARSHI BHARADWAJ, J)

Later:-

After pronouncement of this judgment, Mr. Ratul Biswas, learned Advocate appearing for the District Primary School Council, Purba Medinipur prays stay of operation of this judgment.

The prayer for stay is considered and rejected.

(RAJARSHI BHARADWAJ, J)

Kolkata

15.09.2025

PA (BS)