

Writ Appeal  
Present: (Pranab Kumar Chattopadhyay, J.)  
And  
(Pranab Kumar Deb, J.)  
Judgement on 4.5.2010  
F.M.A.1360 of 2009  
With  
C.A.N.3359 of 2010.

Points:

**Supersession:** President of the West Bengal Board of Secondary Education whether supersede a Managing Committee without giving any opportunity of hearing- Management Rules-R (1)

Facts:

The President, West Bengal Board of Secondary Education in exercise of the powers conferred under Section 28 (2) of the West Bengal Board of Secondary Education Act, 1963 read with Rules 8(1) of the Management Rules superseded the Managing Committee of Tarbandha High School and appointed an Administrator to assume the charge of the said school. The President

of the Board issued the aforesaid order of supersession of the Managing Committee without complying with the provisions of Rule 8 (1) of the Management Rules. The relevant portion of the said Rule 8(1) of the Management

Rules is set out hereunder: The President of the Board never granted any opportunity to the Managing Committee to present its case and furthermore, copy of the report of the Director of the School Education was also not supplied to the

Managing Committee before exercising power to supersede the Managing Committee under the Rule 8(1) of the Management Rules.

Held:

No opportunity was granted to the Managing Committee of the said school to present its case before superseding the said Committee. Furthermore, the President of the Board considered the report of the District Inspector of

Schools (SE), Siliguri, Darjeeling and also the recommendation of the Director of School Education, West Bengal dated 15th December, 2008 on the affairs of the school although copies of the same were not supplied to the Managing Committee of the school before issuing the order of supersession.

Para-13

The members of the Managing Committee were denied opportunity of looking into the aforesaid reports submitted by the District Inspector of Schools (SE), Siliguri, Darjeeling and the Director of School Education, West Bengal in respect of the affairs of the school. The President of the Board considered the aforesaid reports behind the back of the affected party viz., the Managing Committee of the school and arrived at the finding that sufficient grounds have been made out for appointing an Administrator in the said school in supersession of the Managing Committee. By adopting the aforesaid procedure, the President of the Board acted contrary to the rules of natural justice which are specifically embodied in the proviso to Rule 8(1) of the Management Rules.

Para-14 and 15

In the present case, however, Rule 8(1) of the Management Rules specifically provides for granting an opportunity to the Managing Committee to present its case before issuing the order of supersession. The aforesaid Rules for Management of Recognised Non- Government Institutions (Aided and Unaided), 1969 were framed in exercise of the powers conferred by Section 45 of the West Bengal Board of Secondary Education Act, 1963. Therefore, provisions of the aforesaid statutory rules cannot be ignored under any circumstances. Para-18

Admittedly, in case of emergency, President of the Board in terms of Section 28(2) of the Act can exercise the powers vested in the Executive Committee while taking steps under the provisions of Rule 8(1) of the Management Rules which includes the exercise of the powers starting from supplying the report of the Director of School Education to grant a reasonable opportunity to the Managing Committee to present its case before the said President. Para-26

In view of the emergency, President could ask the Managing Committee to present its case before the said President instead of the Executive Committee. Para-27

28) Since the President, West Bengal Board of Secondary Education passed the order on 13th January, 2009 appointing Administrator in supersession of the Managing Committee of the said school in contravention of the specific provisions of Rule 8(1) of the Management Rules, the same cannot be sustained in the eye of law and, therefore, the aforesaid order passed on 13th January, 2009 by the President, West Bengal Board of Secondary Education and communicated by the Deputy Secretary (General) to the then teacher-in-charge of the concerned school by Memo.No.Dar-194/09/G/2 dated 15th January, 2009 superseding the Managing Committee and appointing an Administrator in the said school stands quashed. Para-28

Accordingly, the Administrator appointed in the said school also stands discharged forthwith. For the identical reasons, the impugned judgment and order under appeal passed by the learned Single Judge also cannot be sustained and the same is, therefore, set aside. It has been admitted that the Headmaster has already joined the school and is discharging his duties. Para-29

In the aforesaid circumstances, The Court makes it clear that quashing of the order of supersession will not empower the Managing Committee to interfere with the functioning of the said Headmaster of the school under any circumstances. Para-30

The Court also makes it clear that quashing of the aforesaid order of supersession will not prevent the West Bengal Board of Secondary Education from taking any step or further steps in future in respect of the Managing Committee of the said school strictly in accordance with law, if necessary. Para-31

This appeal, therefore, stands allowed. In view of the aforesaid order, no further order is required to be passed in the connected application and the same is also disposed of as above. Para-32

Cases Cited:

*Karnataka S.R.T.C. & Anr. Vs. S. G. Kotturappa & Anr., reported in (2005)  
3 SCC 409*

*M/s. Sandur Micro Circuits Ltd. Vs. Commissioner of Central Excise,  
Belgaum, reported in 2008(5) Supreme 643*

*B. L. Wadhera –Vs- Union of India & Ors., reported in A.I.R. 2002 S.C.  
1913;*

*Mahendra Pal & Ors. Vs. State of Haryana & Ors., reported in A.I.R. 2009  
SC  
3220.*

*Panchanan Mondal & Ors. VS. West Bengal Board of Secondary Education  
& Ors., reported in A.I.R. 1996 Calcutta 240*

*L. Wadhera Vs. Union of India & Ors., reported in A.I.R. 2002 SC 1913*

Mr. D. P. Mukherjee,  
Mr. Debjit Mukherjee,  
Mr. S. Bhattacharyya.  
...For the Appellants/  
Petitioners.  
Mr. Tapabrata Chakraborty,  
Mr. Abhijit Basu.  
...For the Board.  
Mr. Ajoy Dutta,  
Ms. Tapasi Sinha.  
...For the State.  
Mr. Brojo Gopal Chakraborty,  
Mr. Kashi Nath Mondal.  
...For the Respondent No.7.

The Court :

Assailing the judgment and order dated 16th  
June, 2009 passed by a learned Judge of this Court,

appellants herein have preferred the instant appeal. An application has also been filed for appropriate order in connection with the said appeal. The appeal as well as the connected application have been listed before us for hearing.

2)The appellants herein have questioned the validity and/or legality of the order of supersession of the Managing Committee of Tarbandha High School by the President of the West Bengal Board of Secondary Education.

3) From the records, we find that the President, West Bengal Board of Secondary Education in exercise of the powers conferred under Section 28 (2) of the West Bengal Board of Secondary Education Act, 1963 read with Rules 8(1) of the Management Rules superseded the Managing Committee of Tarbandha High School and appointed an Administrator to assume the charge of the said school.

4) Mr. D. P. Mukherjee, learned Counsel representing the appellants submits that the President of the Board issued the aforesaid order of supersession of the Managing Committee without complying with the provisions of Rule 8 (1) of the Management Rules. The relevant portion of the said Rule 8(1) of the Management Rules is set out hereunder:

*“8. Power of Executive Committee to approve and supersede Committee, to appoint Administrator or Adhoc Committee and to grant special constitution.- (1) The constitution of a Committee shall be subject to the approval of the Executive Committee and the Executive Committee shall have the power to supersede a Committee that has, in its opinion, not been functioning properly and to appoint an Administrator or an Ad-hoc Committee to exercise the power and perform the functions of the Committee:*

Provided that before superseding a Committee under this rule the Executive Committee shall have due

regard to the report of the Director and shall afford a reasonable opportunity to the Committee to present its case before the Executive Committee.”  
(Emphasis Supplied).

5) Mr. Mukherjee submits that the President of the Board never granted any opportunity to the Managing Committee to present its case and furthermore, copy of the report of the Director of the School Education was also not supplied to the Managing Committee before exercising power to supersede the Managing Committee under the Rule 8(1) of the Management Rules.

6) Mr. Tapabrata Chakraborty, learned Counsel representing the Board submits that the President of the Board exercised the emergency power under Section 28(2) of the West Bengal Board of Secondary Education Act, 1963 and in terms of Section 19(A)(3)(e)(iv) of the Act, superseded the Managing Committee of the School and appointed Administrator to manage the affairs of the said school. The aforesaid provisions of Section 28(2) and Section 19(A)(3)(e)(iv) of the Act are set out hereunder:

“19(A):

xxx xxx xxx

(3) (Subject to any general or special orders of the State Government, the provisions of this Act and any rules or regulations made thereunder, the Executive Committee shall have the power) –to

xxx xxx xxx

(e) xxx xxx xxx

(iv) supersede a managing committee and appoint Administrator or *ad hoc* committee to manage the affairs of an Institution.

28(2) The president may, in any emergency, exercise any of the powers of the Board or the Executive Committee provided however that he shall not act contrary to any decision of the Board or the Executive Committee and shall, as soon thereafter as

may be, place a full report before the Board or the Executive Committee as the case may be, of the action taken by him stating reasons therefor.”

7) Mr. Chakraborty submits that in view of the extreme emergency requirements in the proviso to Rule 8(1) of the Management Rules were not complied with. Mr. Chakraborty further submits that the President of the Board is empowered to supersede a Managing Committee under Section 19(A)(3)(e)(iv) in an emergent situation even without complying with the requirements of the Rule 8(1) of the Management Rules.

8) Mr. Chakraborty referred to and relied on a decision of the Hon'ble Supreme Court in the case of *Karnataka S.R.T.C. & Anr. Vs. S. G. Kotturappa & Anr.*, reported in (2005) 3 SCC 409 and submitted that principles of natural justice are not required to be complied with when it will lead to an empty formality.

9) Mr. Chakraborty referred to the report of the District Inspector of Schools and submitted that the members of the Managing Committee of the concerned school were very much aware in respect of the irregularities and, therefore, following the principles of natural justice in terms of Rule 8(1) of the Management Rules, no opportunity of hearing was required to be granted to the said Managing Committee in the facts of the present case.

10) Mr. Chakraborty also referred to another decision of the Hon'ble Supreme Court in the case of *M/s. Sandur Micro Circuits Ltd. Vs. Commissioner of Central Excise, Belgaum*, reported in 2008(5) Supreme 643 and submitted that a rule cannot take away the effect of the Act.

11) Mr. Brojo Gopal Chakraborty, learned Counsel representing the Headmaster of the school supported the action of the President and referring to the report of

the District Inspector of Schools submitted that in the facts situation, the President was justified in superseding the Managing Committee of the school by exercising emergency power.

Mr. Chakraborty referred to and relied on the following decisions of the Hon'ble Supreme Court.

1) *B. L. Wadhera –Vs- Union of India & Ors.*, reported in *A.I.R. 2002 S.C. 1913*;

2) *Mahendra Pal & Ors. Vs. State of Haryana & Ors.*, reported in *A.I.R. 2009 SC 3220*.

12) In terms of proviso to Rule 8(1) of the Management Rules before superseding a Managing Committee, a reasonable opportunity shall have to be afforded to the said Committee to present its case.

13) On examination of the order of supersession issued by the President of the West Bengal Board of Secondary Education, we find that no opportunity was granted to the Managing Committee of the said school to present its case before superseding the said Committee. Furthermore, the President of the Board considered the report of the District Inspector of Schools (SE), Siliguri, Darjeeling and also the recommendation of the Director of School Education, West Bengal dated 15th December, 2008 on the affairs of the school although copies of the same were not supplied to the Managing Committee of the school before issuing the order of supersession.

14) Therefore, the members of the Managing Committee were denied opportunity of looking into the aforesaid reports submitted by the District Inspector of Schools (SE), Siliguri, Darjeeling and the Director of School Education, West Bengal in respect of the affairs of the school.

15) In the present case, the President of the Board considered the aforesaid reports behind the back of the affected party viz., the Managing Committee of the



school and arrived at the finding that sufficient grounds have been made out for appointing an Administrator in the said school in supersession of the Managing Committee. By adopting the aforesaid procedure, the President of the Board acted contrary to the rules of natural justice which are specifically embodied in the proviso to Rule 8(1) of the Management Rules.

16) A Division Bench of this Court comprising of Satyabrata Sinha, J. and Satya Narayan Chakrabarty, J. considered the aforesaid issue in the case of *Panchanan Mondal & Ors. VS. West Bengal Board of Secondary Education & Ors.*, reported in *A.I.R. 1996 Calcutta 240* wherein Their Lordships specifically held:

“7. Keeping in view the fact that the President of the Board exercising his jurisdiction under Section 28(2) of the West Bengal Board of Secondary Education Act and Rule 8 of the Management Rules is required to comply with two conditions precedent, therefore, namely, the report as regards mismanagement of the affairs of the school and compliance of the principle of natural justice and as in the instant case admittedly both the aforementioned conditions precedents have not been fulfilled, the impugned order cannot be sustained.”

17) Mr. Tapabrata Chakraborty, learned Counsel representing the Board relied on a decision of the Hon'ble Supreme Court in the case of *Karnataka S.R.T.C. (Supra)* wherein the Supreme Court specifically held that principles of natural justice cannot be applied in vacuum.

18) In the present case, however, Rule 8(1) of the Management Rules specifically provides for granting an opportunity to the Managing Committee to present its case before issuing the order of supersession. The aforesaid Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969

were framed in exercise of the powers conferred by Section 45 of the West Bengal Board of Secondary Education Act, 1963. Therefore, provisions of the aforesaid statutory rules cannot be ignored under any circumstances.

19) The two conditions specifically mentioned in proviso to Rule 8(1) of the Management Rules are mandatory in nature and the same are required to be complied with before superseding any Managing Committee by the President since the President of the Board or any other authority cannot refuse to comply with the principles of natural justice and procedural justice as specially provided in Rule 8(1) of the Management Rules.

20) The aforesaid decision of the Supreme Court in the case of *Karnataka S.R.T.C. (Supra)* has no manner of application in the facts of the present case since an opportunity has to be granted to the Managing Committee of the school to present its case before issuing any order superseding the said Managing Committee in view of the specific condition mentioned in proviso to Rule 8(1) of the Management Rules.

21) The other decision cited by Mr. Chakraborty in the case of *M/s. Sandur Micro Circuits Ltd. (Supra)* has no manner of application in the facts of the present case as Rule 8(1) of the Management Rules did not take away the effect of any provision of the West Bengal Board of Secondary Education Act, 1963.

22) Mr. Brojo Gopal Chakraborty, learned Counsel representing the Headmaster, however, relied on a decision of the Hon'ble Supreme Court in the case of *B. L. Wadhera Vs. Union of India & Ors., reported in A.I.R. 2002 SC 1913* and submitted that any rule which is contrary to the provisions of the Act cannot be given effect to.

23) We fail to understand how the aforesaid decision can be of any help to the learned Counsel of the respondent in the facts of the present case since the President of the Board issued the order of supersession not only under Section 28(2) of the Act but also in terms of Rule 8(1) of the Management Rules. Therefore, it cannot be said that Rule 8(1) of the Management Rules is contrary to any provision of the West Bengal Board of Secondary Education Act, 1963. As a matter of fact, learned Counsel representing the Board also did not argue that the aforesaid Rule 8(1) is contrary to any provision of the West Bengal Board of Secondary Education Act, 1963.

24) The learned Counsel representing the Headmaster also relied on a decision of the Hon'ble Supreme Court in the case of *Mahender Pal & Ors. Vs. State of Harana & Ors., reported in A.I.R.2009 SC 3220* and submitted that in a case of emergency, right of hearing can be taken away only if conditions precedent for exercise of the said emergency power are satisfied.

25) The aforesaid decision is also not at all applicable in the facts of the present case.

26) Admittedly, in case of emergency, President of the Board in terms of Section 28(2) of the Act can exercise the powers vested in the Executive Committee while taking steps under the provisions of Rule 8(1) of the Management Rules which includes the exercise of the powers starting from supplying the report of the Director of School Education to grant a reasonable opportunity to the Managing Committee to present its case before the said President.

27) In view of the emergency, President could ask the Managing Committee to present its case before the said President instead of the Executive Committee.

28) Since the President, West Bengal Board of Secondary Education passed the order on 13th January, 2009 appointing Administrator in supersession of the Managing Committee of the said school in contravention of the specific provisions of Rule 8(1) of the Management Rules, the same cannot be sustained in the eye of law and, therefore, the aforesaid order passed on 13th January, 2009 by the President, West Bengal Board of Secondary Education and communicated by the Deputy Secretary (General) to the then teacher-in-charge of the concerned school by Memo.No.Dar-194/09/G/2 dated 15th January, 2009 superseding the Managing Committee and appointing an Administrator in the said school stands quashed.

29) Accordingly, the Administrator appointed in the said school also stands discharged forthwith. For the identical reasons, the impugned judgment and order under appeal passed by the learned Single Judge also cannot be sustained and the same is, therefore, set aside. It has been admitted before us that the Headmaster has already joined the school and is discharging his duties.

30) In the aforesaid circumstances, we make it clear that quashing of the order of supersession will not empower the Managing Committee to interfere with the functioning of the said Headmaster of the school under any circumstances.

31) We also make it clear that quashing of the aforesaid order of supersession will not prevent the West Bengal Board of Secondary Education from taking any step or further steps in future in respect of the Managing Committee of the said school strictly in accordance with law, if necessary.

32) This appeal, therefore, stands allowed. In view of the aforesaid order, no further order

is required to be passed in the connected application and the same is also disposed of as above.

In the facts of the present case, there will be, however, no order as to costs.

Urgent xerox certified copy of this order, if applied for, shall be given to the appearing parties, as early as possible.

(Pranab Kumar Chattopadhyay, J.)

(Pranab Kumar Deb, J.)