

01.04.2024

Item no. 18

Dd/CP

CO 633 of 2024

Ms. Rina Maitra

Vs.

Sunil Kumar Agarwal & Ors.

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Partha Pratim Roy,
Mr. Anirban Das,
Mr. Samriddha Sen,
... .. For the Petitioner

Ms. Ratnanko Banerji, sr. adv.
Mr. Aniruddha Mitra,
Mr. Nilarnab Paul,
... ..For the respondent no. 1

Mr. Rupak Ghosh,
Mr. A. Bhar,
... ..For the opposite party no. 3

1. The revisional application arises out of the order dated February 13, 2024 passed by the learned Additional District Judge, 2nd Court, Barasat, District 24 Parganas in Misc. Appeal No. 06 of 2024. By the order impugned, an ad-interim order of injunction dated January 25, 2024 passed by the learned Civil Judge (Junior Division), 1st Court at Barasat in Title Suit No. 18 of 2024, was set aside.

2. The petitioner was appointed as the Vice-Principal of The Newtown school. The school was established by Savitri Educational Foundation. The petitioner is the plaintiff in the suit. Mr. Sunil Kumar Agarwal, the defendant no. 1/opposite party No.1 is one of the co-founders of the school

along with Mr. Sanjay Khemka, the opposite party/defendant no. 3. The defendant no. 2 was the Enquiry Officer who held an inquiry with regard to the alleged misconduct and misdemeanour of the petitioner and found the petitioner guilty of misconduct as defined under sub-Rule 3(a), (b), (d),(f), (i) and (m) of Chapter XIV of Employee Handbook.

3. Initially, a show cause notice was issued to the petitioner and she had challenged the same by filing a title suit. As the enquiry proceeded and she was terminated by a letter issued by the defendant no. 1, she filed another suit which is the subject matter of this revisional application. The petitioner prayed for an ad-interim order of injunction for stay of operation of the termination notice. As the defendant no. 1 had filed a caveat, initially the ad interim order of injunction was refused. The defendant no. 1 also filed an application under Order 7 Rule 11 of the code of Civil Procedure.

4. On January 25, 2024, the defendant no. 1 prayed for time to file an objection to the injunction application. The learned trial Judge held that the application under Order 7 Rule 11 of the Code of Civil Procedure should be heard first, but the learned Judge also stayed the termination notice dated December 6, 2023 issued by the defendant no. 1 till the disposal of the application under Order 7 Rule 11 of the Code of Civil Procedure.

5. The defendant no. 1 challenged such order, alleging that while granting the ad interim stay of the order of termination, the learned trial Judge

had not discussed the prima facie case, balance of convenience and inconvenience and irreparable loss and injury. Accordingly Misc. Appeal No. 06 of 2024 was filed.

6. The learned Additional District Judge, Second Court at Barasat allowed the Misc. Appeal, inter alia, holding that the learned trial Judge had failed to take into consideration the settled principles governing grant of ad interim injunctions. The decision of the Hon'ble Supreme Court in **Shiv Kumar Chadha v. Municipal Corporation of Delhi** reported in **1993 3 SCC 163**, had cast a duty upon the courts to ensure that the three tests, i.e., prima facie case, balance of convenience and inconvenience and irreparable loss and injury was satisfied by the plaintiff. The learned Appellate Court allowed the Misc. appeal and directed the learned Civil Judge, Junior Division, 1st Court at Barasat to dispose of the applications pending before him, expeditiously.

7. Mr. Abhrajit Mitra, learned senior advocate on behalf of the petitioner, submits that the learned Appellate Court, under the special facts and circumstances of the case, ought to have made an interim arrangement. Considering the disturbance and disrepute which the school would face and the anxiety of the students, the petitioner should have been allowed to continue.

8. According to Mr. Mitra, it was the duty of the Appellate Court to decide how the school would run. The fact that students had been sent up for the Board examinations, the Admit Cards and other documents were signed by the petitioner as the Vice-Principal of the school,

doing away with the service of the petitioner was adverse to the interest of the school as well. It is a matter of record that the school was functioning without any Principal. The Principal had resigned.

9. Mr. Mitra has drawn the attention of the Court to the appointment letter of the petitioner which is at page 122 of the revisional application. It appears that the said appointment letter was signed by Mr. Sunil Kumar Agarwal as one of the founder Directors. However, the letter records that the appointment letter was issued pursuant to an application and interview which the petitioner had with more than one person. It further records that the appointment would be subject to the employee's agreement and non-disclosure agreement and the Employee Handbook of "The Newtown School". The letter records that "we" are pleased to appoint you as the Vice-Principal in "our school" in the following terms. According to Mr. Mitra, the use of the expression 'us', 'we' and 'our' indicates that the appointment was on the basis of a decision of the school management or at least the founders. The Employees Handbook has been referred to in great detail in order to substantiate the claim of the petitioner that the appointment letter, even if signed by Mr. Sunil Kumar Agarwal, was issued by the appointing authority. The appointing authority is the management of the school. The school management has been defined as the founder directors and included other members of the Governing Body of Savitri Education Foundation. The members of the Governing Body have been listed at page 152 of the revisional

application. Mr. Mitra has brought to the notice of the Court that as many as 8 persons comprise of the school management/governing body, which includes Mr. Sunil Kumar Agarwal as one of the members. Reliance is also placed on the letter confirming the service of the petitioner as the Vice-Principal, after she completed her probation and such letter was signed by both the founder director, namely, Mr. Sunil Kumar Agarwal and Mr. Sanjay Khemka.

10. According to Mr. Mitra, the show cause, the charge sheet as also the termination letter was unauthorised and contrary to the service Rules. The same could not be issued unilaterally by the opposite part No.1. The opposite party No.1 did not have any authority at all. The learned trial Judge may not have supplied reasons, but the documents ought to have been gone into by the learned appellate Court in order to arrive at the conclusion that there was existence of *prima facie* case and the plaintiff/petitioner had satisfied the parameters for grant of an ad-interim order of injunction.

11. Mr. Mira relies upon the following decisions. :-

- 1) **2012 3 CHN 172 [Bhaskar Gayen vs. Subhadip Mullick]**
- 2) **1999 1 CHN 617 [NEPC Mecon Limited Vs. Magma Leasing Limited]**

12. Mr. Ghosh, learned advocate appearing on behalf of the defendant no. 3 Mr. Sanjay Khemka submits that Mr. Sunil Kumar Agarwal was unilaterally trying to usurp the school and was

trying to take over total control. The petitioner was functioning as the Vice-Principal and continued to function as such, even during the pendency of the enquiry proceedings. Upto January, 2024 she was paid her salary. Once the order of the Appellate Court was passed, the salary was stopped. The petitioner continues to attend the school. The opposite part No.1 did not have any authority to issue the termination letter. There were documents which would show that both the co-founders were required to sign on important documents and had to function conjointly. Sunil Kumar Agarwal could not have initiated any disciplinary proceeding behind the back of the other co-founder and without proper approval. The management of the school comprised of the co-founders and other members of the foundation. The termination order should be stayed for the benefit of the students.

13. Mr. Ratnanko Banerji, learned senior advocate appearing for the defendant no. 1 submits that each and every document, namely, the show cause notice, the charge sheet and the termination letter would indicate that steps were taken against the petitioner on behalf of the school management. The defendant no. 1 had elaborated how the school management had warned the petitioner on many allegations against her. She was warned against her acts of impersonation, misdemeanor and misconduct.

14. Mr. Banerji contends that the suit itself was not maintainable and an application under Order 7 Rule 11 of the Code of Civil Procedure had been filed. Further contention is that a

status quo ante, staying the termination letter should not be passed at this stage as the employer had already taken a decision with regard to termination of the services of an employee, by strictly following the Employee Handbook. Mr. Banerji further contends that the list of the member of the managing Committee as referred to in the revisional application comprised of the erstwhile managing committee and the same should not be taken note of. Rather, it is submitted that the defendant no. 1 is the Joint President of the School with Mr. Sanjay Khemka and the only person running the school on behalf of the foundation.

15. Mr. Banerji also submits that under no circumstances can the petitioner be allowed to function. She was dismissed after a proper enquiry. Any order on such dispute with regard to service, was beyond the jurisdiction of this court.

16. Having heard rival contentions of the parties, this Court, prima facie, finds the following:-

a) Appointment letter was issued and signed by Mr. Sunil Kumar Agarwal, the defendant no. 1 on behalf of a body or some person or persons. Reference being made to the expressions 'us', 'we' and 'our'. It was not a unilateral action.

b) The confirmation letter was issued by both the co-founders. The defendant no. 3 who is the other co-founder denies the authority of the defendant no. 1 to unilaterally proceed against the petitioner, by initiating a disciplinary proceeding. He submits that the petitioner is a

victim of the internal conflict between the co-founders.

c) The expression 'appointing authority' in the Employee Handbook is the school management and the school management has been defined as the co-founders including the other members of the managing committee.

d) The co-founders have a dispute, which is reflected in the documents before this Court. While one co-founder proceeds against the petitioner, the other co-founder directs the petitioner not to participate in the disciplinary proceedings. Thus, even if the school management comprises of only the cofounders, both the co-founders were required to take disciplinary action against an employee, in my prima view.

e) The Employee Handbook did not authorize one of the co-founders to act unilaterally either in case of initiation of disciplinary proceedings or in case of imposition of punishment.

f) The failure to assign reasons while granting the ad-interim injunction has made the order of the learned Judge unreasonable and vulnerable in appeal, but the same did not destroy the order. The facts should have been looked into by the appellate court, while testing the order.

g) Whether there were documents to show that Mr. Sunil Kumar Agarwal was authorized by the management, whether Mr. Sunil Kumar Agarwal was all along the representative of the management, whether the suit was maintainable in its present form, can only be decided upon

considering the objections of the defendants to the application for injunction.

17. Another crucial issue is the welfare of the students, who have been studying in the school since 2015. The new session is yet to commence. The Students have also been sent up for the Board Examination of Class X and Class XII. There will be other duties and functions in this regard. Fresh admissions are also in the process.

18. Under such circumstances, I find that the learned Appellate Court failed to make an interim arrangement. The Appellate Court was right in holding that the order of the learned Trial Judge suffered from the flaw of non-disclosure of reasons, but the reasons could have been supplied by the learned Appellate Court. An arrangement as to how the school would function in the meantime, keeping the welfare of the school in mind, ought to have been made.

19. Thus, the balance of convenience and inconvenience with regard to proper functioning of the school and the fate of the students should have been decided. The anxiety of the parents who have invested their money, trust and expectations in the institution, should have been of equal importance. Moreover, the prima facie case has also been discussed hereinabove.

20. Another crucial document which was not before the Courts has been supplied by the petitioner during the course of hearing. It has been issued by the Commissioner of School Education West Bengal dated February 12, 2024. One of the parents had issued a letter to the CBSC Board with regard to the condition of the

school. The same was forwarded to the Commissioner of School Education, West Bengal. The Board called for a report. The Commissioner of School Education reported to the Secretary of the Board of Secondary Education, CBSC.

21. Upon discussion with the co-founder and the complainant Ms. Rajani Jaiswal, the Commissioner of School Education found that: a) the school authority had not uploaded the mandatory disclosures in their Web-site, b) the post of the Principal was lying vacant since December 12, 2022, c) the activities of the school had been hampered.

22. The problem assessed by the Commissioner of School Education were a) meetings of the Managing Committee had not been held since February 18, 2020, b) the validity of the managing Committee had expired, but the Managing Committee had not been reconstituted, c) the Governing Body's meetings were not held since long, d) the bank account was being jointly operated by Mr. Sanjay Kumar Agar Khemka and Mr. Sunil Kr. Agarwal, e) Apart from ego clashes, the apparent cause of dispute between the two co-founders was with regard to the termination of the Vice Principal of the School.

23. While allegations were made by Mr. Sunil Agarwal against the vice-principal, Mr. Khemka was of the opinion that the vice-principal had been discharging her duties properly and she could not be removed. The recommendation of the Commissioner of School Education was as follows:-

"The undersigned tried to negotiate between two founder Directors so that the problem can be resolved, and the school can run smoothly. However, it is revealed that the dispute between the two sides is found to be difficult to be resolved at this moment. Hence, it is proposed that the CBSE, being the affiliating body of the school, may appointment (sic, appoint) an administrator for a period of six months. In addition to taking necessary steps for day-to-day functioning of the school properly. The administrator may also take necessary actions towards formation of School Managing Committee in the meantime. If found appropriate, the Sub-Divisional Officer, Bidhan Nagar Sub-Division may be appointed as Administrator of the school."

24. This court is unable to assess whether any steps have been taken by the CBSE or not, but the situation is such that the Commissioner of School Education after a discussion had found that the school was not running properly and had left it to the CBSE Board to take a decision in the matter.

25. Thus, this court is of the, *prima facie*, view that the school should run in a proper manner and the welfare of the students should be of primary importance. The internal conflict between Mr. Agarwal and Mr. Khemka is not to be resolved by this court. Yet, it is true that the vice-principal also, should not be a victim of such internal conflict. Vice-principal should discharge her duties with respect and regard to the co-founders and as per the desire of the co-

founders, namely, Mr. Agarwal and Mr. Khemka. She should be governed by the service rules.

26. As it appears that the managing committee has not been reconstituted and had expired long ago, the contention of Mr. Banerji that the other members of the managing committee had authorized Mr. Agarwal is, prima facie, incorrect. Mr. Agarwal was acting unilaterally without any approval or consent of the other co-founder. The absence of a proper, functioning and valid managing committee, is prima facie available from the report. It is true that the petitioner as the vice-principal had sent up several students for the board examination and the results are awaited. She has signed the admit cards and other documents. The mark sheets, migration certificates, character certificates etc. will also have to be issued by the head of the institution and, thus, the learned Trial Judge has to decide the application for injunction expeditiously. Whether the petitioner should continue with the post upon such terms and conditions that the court may impose or whether the petitioner did not deserve to be protected by an order of injunction under the facts and circumstances which led to her termination, will be decided by the Trial Judge. Such decision of the learned court will depend on the facts of the case, the documents, the objections. The petitioner's prayer will be tested on the cardinal principles governing injunction.

27. However, having considered that there is a conflict between the co-founders and there is no school management, an interim arrangement

should be made so that the school continues and the actions already taken by the vice-principal which may require reiteration/validation may not be hampered. The petitioner will continue her duties as the vice-principal only with regard to aspects relating to imparting education vis-à-vis the students, their examinations, representations in the examinations, enforcement of discipline, admission, signing documents, etc.

28. The other coordinators will aid and advise the vice-principal and she cannot take any major decision without consulting the coordinators. Mr. Agarwal and Mr. Khemka shall act in a manner befitting of co-founders of a school and will not bring

their personal animosity during the administration of the school. This arrangement will continue till the decision is taken by the learned trial Judge and shall not be used by any party before any fora as an adjudication by this court as to the right, title and entitlement of the parties involved in the suit.

29. The defendant no.1 and defendant no. 3 shall file their objections to the application for injunction within ten days and the learned Trial Judge will dispose of the said application before the ensuring summer vacation.

30. This order shall not prevent the Board from taking decisions in accordance with law, insofar as the management is concerned.

31. The salary of the petitioner shall be kept in a separate interest bearing account on and

from February, 2024, till the final decision of the learned Trial Judge.

32. The learned Trial Judge will decide the fate of such money upon completion of the injunction hearing and the claim of the petitioner to such salary will be decided by the learned Trial Judge upon the petitioner satisfying the court that she was entitled to the same on account of services rendered as per the direction of this court.

33. This order shall not be used as any restriction on the co-founders/management, from proceeding with the appointment of the principal in accordance with law and the Employee Handbook.

34. The revisional application is disposed accordingly. There shall be no order as to costs.

35. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)