

28.09.2018

Item No. 18
Court No.15
Avijit Mitra

W.P. No.18225 (W) of 2018

In re: Sutantra Haldar
- Versus -
The State of West Bengal & Ors.

Mr. Firdous Samim
For the Petitioner

Mr. Dipayan Chowdhury,
Mr. Soumya Bhattacharya
For the Respondent no.3

Mr. Kumar Jyoti Tewari
For the Respondent no.4

The present writ petition has been preferred challenging *inter alia* an order dated 21st August, 2017 passed by the respondent no.5.

Mr. Shamim, learned advocate appearing for the petitioner submits that the petitioner is an Assistant Teacher of a primary school, namely, Dakshin Alipore F.P. School (in short, the said school). In the said school, there are 54 students and two Assistant Teachers including the petitioner. On the basis of a memo dated 20th August, 2018 issued by the respondent no.3, the respondent no.5 issued the impugned order appointing the petitioner in terms of the provisions of Section 13 CC of Representation of People Act, 1950 to discharge the function of Custodian cum Designated Officer in respect of Electoral Part No.146/289 of Bishnupur (SC) Assembly constituency for the period from 1st September 2018 to 31st October, 2018 in connection with the Special Summary Revision of Electoral Rolls with reference to 1st January, 2019 as qualifying date. In the said order it was also directed that the petitioner would have to sit from 11 am to 4pm during all working days (including

Sunday) and from 10 am to 5pm on four special campaign dates, i.e., 9th September, 23rd September, 6th October and 28th October, 2018.

Drawing the attention of this Court to the provisions of Sections 25 and 27 of the Right to Children to Free and Compulsory Education Act, 2009 (in short, the RTE Act) and the schedule referred therein, he submits that up to 60 admitted children there should be two teachers and that no teacher shall be deployed for any non-educational purposes other than decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament.

He further submits that in terms of the provisions of Section 35(1) of the RTE Act and the judgment delivered in the case of *Election Commission of India Vs. St. Mary's School & Ors.* reported in (2008) 2 SCC 390, the Ministry of Human Resource Development, Department of School Education and Literacy, Government of India has issued a guideline to the effect that *"duties relating to election to the local authority or the State Legislatures or Parliament relate to conduct of elections and the consequent deployment of teachers on the days of poll and counting, the time spent on training imparted to them and collection of election material for such deployment. All other duties relating to electoral roll revisions will be undertaken on holidays and during non-teaching hours and non-teaching days"*.

He further submits that by the impugned order the service of the petitioner has been requisitioned on the days on which the said school would be open and as a consequence thereof, the pupil-teacher ratio, as mandatorily required to be maintained, would be affected. Such requisition is thus violative of the provisions of the RTE ACT and the guidelines framed by the concerned Ministry. The objection raised by the petitioner against

the impugned order by way of a representation to the respondent no.5 on 7th September, 2018 was not responded to.

He further submits that there is no reasoning in the impugned order as regards the requirement of teachers for Special Summary Revision of Electoral Rolls on teaching days and the said order has been issued in a slip shod manner being oblivious of the guidelines framed. The right to education is a fundamental right and it is the duty of the State to ensure that the students are not deprived thereof. In support of the arguments advanced reliance has been placed upon the judgments delivered in the case of *State of U.P. & Ors. Vs. Shiv Kumar Pathak & Ors.* reported in (2018) 12 SCC 589 (para 16) and in the case of *Vikas Sankhala & Ors. Vs. Vikas Kumar Agarwal & Ors.* reported in (2017) 1 SCC 350 (Paras 1 to 5).

Mr. Chowdhury, learned advocate appearing for the respondent no.3 submits that the word "election" in Article 324 of the Constitution of India is used in a wide sense so as to include the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the result of the process. Special Summary Revision of Electoral Rolls is a part of such election. In Section 27 of the RTE Act it has been clearly stated that there is no bar towards engagement of teachers on duties relating to elections to the local authority or the State Legislature or the Parliament. In support of such contention reliance has been placed upon the Gujarat Assembly Election matter answering the questions referred to the Hon'ble Supreme Court reported in (2002) 8 SCC 239.

He further contends that Election Commission is required to conduct election for the purpose of upholding democracy and holding of such election is a sovereign function which cannot be curtailed by the guidelines framed by the concerned Ministry.

He further submits that within the period from 1st September, 2018 to 31st October, 2018 there are only 31 teaching days and the remaining period stands covered by non-teaching days and holidays. The qualifying date as fixed in the memo dated 20th August, 2018 is 1st January, 2019 and the process towards Special Summary Revision of Electoral Rolls needs to be completed immediately and as such there is a pressing necessity for engagement of teachers to complete the said work within the time frame.

He further submits that the individual interest of an Assistant Teacher cannot be granted any weightage while considering the validity of the order impugned moreso when normally the activities of receiving claims and objection are not held on sundays, holidays declared under Negotiable Instruments Act, 1881 and other public holidays except otherwise specifically declared as special days._Let the written instruction as produced be kept on record.

He further submits that there is no infirmity in the decision making process towards issuance of the order impugned in the writ petition and the guidelines have not been issued for implementation of the provisions of the said Act and that in the event, the impugned order is interfered with it would be opening a floodgate of litigations.

He further submits that the judgement delivered in the case of St. Mary's (Supra) has no manner of application in the instant case inasmuch as the same was delivered prior to the coming into effect of RTE Act.

Mr. Tiwari, learned advocate appearing for the respondent no.4 submits that the respondent no.3 is bound to follow the guidelines as framed by the concerned Ministry in consonance with the judgment delivered by the Hon'ble Supreme Court in the case of St. Mary's (Supra). The said guidelines have been framed on the basis of the authority

conferred by the provisions of Section 35 of the RTE Act and that the services of a teacher cannot be utilised for election purposes on teaching days.

Indisputably, there are only two primary teachers including the petitioner in the said School as mandatorily required under the provisions of the RTE Act. The guidelines which have been framed by the concerned Ministry do not suffer from any jurisdictional error inasmuch as the same have been framed on the basis of the authority conferred under Section 35 of the RTE Act.

For implementation of the provisions of the RTE Act, the *"duties relating to elections to the local authority or the State Legislatures or Parliament"* in Section 27 of the RTE Act have been explained by the guidelines stating that the said duties *"relate to conduct of elections and the consequent deployment of teachers on the days of poll and counting, the time spent on training imparted to them and collection of election material for such deployment"* and that *"All other duties relating to electoral roll revisions will be undertaken on holidays and during non-teaching hours and non-teaching days"* and as such the argument of Mr. Chowdhury that the guidelines do not pertain to implementation of the provisions of the said Act is not acceptable to this Court.

The argument of Mr. Chowdhury that the conferment of the benefits to the petitioner would open a floodgate is also not acceptable to this Court. Only because, there is a possibility of floodgate litigation, the valuable right of a citizen cannot be permitted to be taken away.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The questions answered by the Hon'ble

Supreme Court in the Gujarat Assembly Election reported in (2002) 8 SCC 239 have no application in the present case.

It is true that the judgment in the case of St. Mary's (Supra) was delivered prior to coming into effect of the RTE Act but the issue urged in the same is identical to the *lis* involved in the present matter and answering the issue as to whether the services of the teachers of government schools during school timings can be utilized for election purposes, it was categorically observed in paragraph 33 that *"We would, however, notice that the Election Commission before us also categorically stated that as far as possible teachers would be put on electoral roll revision works on holidays, non-teaching days and non-teaching hours; whereas non-teaching staff be put on duty any time. We, therefore, direct that all teaching staff shall be put on the duties of roll revisions and election works on holidays and non-teaching days. Teachers should not ordinarily be put on duty on teaching days and within teaching hours. Non-teaching staff, however, may be put on such duties on any day or at any time, if permissible in law."*

From the order impugned in the writ petition it is explicit that in 21 teaching days the petitioner would be required to discharge his duties as Custodian-cum-Designated Officer starting from 10 am in the morning till 4 pm in the evening which falls within the teaching hours of the said school.

In such circumstances, I am of the opinion that the impugned order is not sustainable in law and the same is, accordingly, set aside.

It is however made clear that the respondent nos. 3 and 5 would be at liberty to issue fresh direction towards utilization of the services of the petitioner during holidays and non-teaching days and during non-teaching hours.

With the above observations and directions, the writ petition is disposed of.

There shall however be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Tapabrata Chakraborty, J.)