

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No.1137 of 2023

**SHRI DIPENDRA KUMAR SANYAL
VS
THE DIRECTOR AND MEMBER
SECRETARY BOARD OF GOVERNORS (IISWBM) AND ORS**

For the petitioner : Mr. Tilak Kumar Bose, Sr. Adv.
Mr. Biswaroop Bhattacharya, Adv.
Mrs. Vijaya Bhatia, Adv.
Ms. Susmita Paul, Adv.

For the respondent no.1 : Mr. Lakshmi Kumar Gupta, Sr. Adv.
Mr. Chayan Gupta, Adv.
Mr. Pran Gopal Das, Adv.
Mr. Saikat Biswas, Adv.
Mr. Sumit Sen, Adv.
Mr. Shuvojeet Gupta, Adv.

For the
respondent nos.3 and 4 : Mr. Amitava Chaudhuri, Adv.
Mr. N. Roy, Adv.

For the
respondent no.5 : Mr. Nilotpal Chatterjee, Adv.
Mr. Satyaki Banerjee, Adv.

For the State : Mr. T.M. Siddiqui, Adv.
Mr. Debasish Ghosh, Adv.

Hearing concluded on : 12.06.2023

Judgment on : 22.06.2023

The Court:

1. The present writ petition has been preferred against the decision taken on May 30, 2017 in a meeting of the Board of Governors (BOG) of the Indian Institute of Social Welfare and Business Management

(hereinafter referred to as, “the Institute”) whereby the President opined that the Board of Trustees (BOT) should be dissolved and the BOG would continue. It is argued that the said proposal was accepted by the BOG and confirmed subsequently in the meeting of the BOG dated December 10, 2018.

- 2.** Learned senior counsel appearing for the petitioner argues that the said resolution is patently contradictory to the Memorandum of Association of the Institute and, if accepted, would render the functioning of the Institute lop-sided by concentrating the entire power in the BOG, which was never the intention of the founders.
- 3.** It is shown from the Memorandum that eminent members of the society were Members of the Institute with the founder member being the then Chief Minister Dr. B.C. Roy. The father of the present petitioner was one of the founder members. Learned senior counsel places reliance on the Memorandum to show that the BOG may from time to time elect such person or persons as they think fit to be Life Members. Also, Clause 2(c) indicates that several of the ex-officio members are persons appointed by the State and/or executives of the State.
- 4.** As such, it is sought to be argued that a shifting of the pivot of the power to the BOG would virtually mean that the entire control of the Institute, which was sought to be formed as an independent and autonomous body, would go to the State functionaries. Learned counsel also indicates that the ex-minister of Higher Education of the State of West Bengal, being respondent no.2, was the former President

of the BOG. It is argued and pleaded by the petitioner that due to the unwarranted influence of the said ex-minister, who was allegedly calling the shots in the Institute, the present challenge could not be preferred earlier.

- 5.** Learned senior counsel lies stress on several Clauses of the Memorandum of Association to show that the estate of the Institute and the basic administration was vested in the Trustees, who are supposed to be people of academic excellence and expertise and were originally intended to conduct the essential functions of the Institute. The alteration sought to be incorporated by the impugned decision would change the basic structure of the Institute and its Memorandum and would render the checks and balances incorporated therein nugatory.
- 6.** Learned counsel appearing for the respondent nos.3 and 4 argues that the said functionaries of the State have been unnecessarily embroiled in the present litigation, despite them having no effective role to play, and/or without any relief having been sought against them. There is no involvement or approval of the State, it is argued, and a member is admitted to the Institute only with his consent.
- 7.** As such, even the ex-officio appointments in the BOT are not the lookout of the State at all. It is argued that, as such, the perception of the State seeking to assert control over the Institute has no basis whatsoever.

8. Learned senior counsel appearing for the respondent no.1 argues that the resolution impugned in the present writ petition was taken on May 30, 2017, that is about six years back. No explanation has been given as to what prompted the extreme delay in preferring the present challenge. That apart, there is no cause of action for filing the present writ petition since the Institute has never accepted the suggestion made in the impugned resolution. It is argued that although initially the resolution was placed and confirmed by the BOG, the same did not assume the colour of a decision and has never been implemented. Learned senior counsel also places reliance on Annexure P-8 at page 92 of the writ petition, which is a letter dated November 29, 2022 issued by the office of the Registrar of Forms, Societies and Non-Trading Corporations, indicating that there is no alteration of the Memorandum of Association and Regulations of the Society, that is, the Institute. As such, it is argued that the instant challenge is not maintainable *ab initio*.
9. It is contended that for the Memorandum of Association to be amended, a majority of 3/4th of the Members is to be taken. In the present case, the matter went up to the stage of being placed before the statutory authority and was subsequently ratified. However, the same was not placed at any point of time before the Annual General Meeting (AGM) or the statutory authority to decide on the same. It is also reflected from the stand taken by the office of the Registrar of Societies that no such amendment was ever carried out pursuant to

the impugned decision and, as such, the said decision remained merely at the stage of an opinion.

- 10.** It is further argued by the respondent no.1 that the petitioner does not have any *locus standi* to prefer the instant challenge, in the absence of any challenge by the BOT to the impugned decision. It is argued that although the petitioner's father was one of the founder Members of the Institute, the petitioner was never appointed as a trustee in due course of law.
- 11.** Learned senior counsel for the petitioner controverts such contentions and argues that the petitioner is the Chairman of the BOT and was even a part of the relevant meetings. It is reflected from the minutes of the BOG meeting dated August 5, 2016 that the petitioner was a Member of the said Committee which looked into the matter. In fact, the dissent of the petitioner was also recorded in the meeting which had confirmed the minutes of the previous meeting dated June 30, 2016.
- 12.** Hence, it cannot be said that the petitioner does not have *locus standi*. That apart, the petitioner reiterates his initial submissions on merits.
- 13.** A perusal of the relevant clauses of the Memorandum of Association of the Institute undoubtedly indicates that the BOT has an essential role to play within the scheme of the Memorandum.
- 14.** Clause 37 of the same pertains to execution of documents and provides that all documents and instruments on behalf of the BOT are

to be executed by such trustee or trustees, as the Board may from time to time determine, which documents would be valid and binding.

- 15.** More importantly, Clause 38 stipulates that the trustees shall spend money or transfer or deal with the properties vested in them and execute documents as the BOG may determine from time to time. The concurrence of the trustees, as per the said Clause, shall be necessary for sale, transfer, conveyance, mortgage, charge, encumbrance, alienation and lease of the properties of the Institute.
- 16.** Clause 39 provides that the trustees shall invest the funds of the Institute and realise all income, rents, issues and profits of the properties of the Institute out of which they shall pay all outgoings in respect of such properties and hold the balance for the objects and purposes of the Institute.
- 17.** Clause 44 stipulates that the trustees shall appoint one of their Members as Treasurer. As per Clause 42, all properties of the Institute, movable and immovable, shall be vested in the BOT. Clause 46 empowers the BOT to finally prepare the budget along with their views to be placed before the AGM of the Members of the Institute.
- 18.** Although Clause 50 stipulates that in case a budget is rejected, the BOG shall be competent, in spite of such rejection, to spend out the money or funds of the Institute, such sums are stipulated to be those required for the administration and management of the Institute and for the due discharge of the functions including payment of all

outgoings, salary to the staff and engagements and commitments already made or accepted.

- 19.** Hence, in the scheme of things and in order to maintain proper checks and balances, the existence of the BOT is undoubtedly an essential feature of the Institute and its Memorandum of Association.
- 20.** Clause 57 of the Memorandum provides that the Rules and Regulations of the Institute may be altered, amended and added to by a vote of 2/3rd of the Members of the BOG present and voting at the meeting of the BOG after notice of the proposed amendment, alteration or addition has been given in writing to all members not less than one month before the meeting. The rules, as altered, amended or added, shall be binding on all existing members. The agenda for AGM of the Institute has been stipulated in Clause 47 of the Memorandum, which includes various facets of the activities of the Institute including a budget as finally prepared by the BOG, statement showing annual receipts and disbursement and a report showing various activities of the Institute including activities which the BOG desires to take in the future. As per Clause 49, at any meeting, 3/4th of the members of the Institute present and voting may make additions and alterations to the Budget or reject the same. Otherwise the budget, as placed before the meeting, shall be deemed to have been approved by the members.
- 21.** Hence, the argument of respondent no.1 that the amendments or alterations to the Memorandum or Rules and Regulations of the

Institute have to be mandatorily placed before the AGM does not find place in the provisions of the Memorandum itself.

- 22.** Rather, Clause 57 indicates that two-thirds of the members of the BOG can, by voting at their own meeting after notice of the proposed amendment of not less than one month, may have such amendment or alteration effected. Such amendment/alteration would then be binding on all existing members.
- 23.** Hence, the argument made by the respondent no.1 that the present writ petition is premature cannot, in all fairness, be accepted. In fact, the impugned decision of the BOG, having been confirmed and ratified by the majority subsequently, now operates as a time-bomb, which may explode at any point of time at the sweet will of the BOG. There is no safety net between the impugned decision and its implementation within the contemplation of the Memorandum itself. As per the statutory requirement, the resolution merely has to be intimated to the appropriate authority for the purpose of giving the same the sanctity of law. However, there is nothing to prevent the said decision to be implemented even now, as there is no specific time-bar for the same. Thus, the apprehension of the petitioner is quite valid to the extent that the impugned decision, if permitted to remain, may be implemented at any point of time.
- 24.** Even without going into the merits of the allegation that the challenge could not be taken out before the removal of respondent no.2 from his office as the Minister of Higher Education, Government of West Bengal, the cause of action on the basis of apprehension of the

petitioner is still alive and is a continuing cause of action, since the impugned decision can be implemented by the BOG at any point of time at its option.

- 25.** A comprehensive perusal of the provisions of the Memorandum, as reflected in its various clauses, clearly indicates that the BOG, although having primacy in certain aspects, is not the be-all and end-all of the Institute and cannot be rendered so by effecting an amendment at the own sweet will of the governors. The BOG cannot arrogate to itself the entire trove of powers in respect of the Institute, in the teeth of Clauses 38, 39, 42 and 44, which are cardinal features of the Memorandum of Associations of the Institute. The said provisions can very well be termed as the 'basic structure' of the Memorandum of Association and contain the implicit balancing factors contemplated in the functioning of the Institute, of which the memorandum cannot be denuded. Such an amendment, if permitted, would demolish the very concept of functioning of the Institute and its autonomy, all the more so since several members of the BOG are functionaries of the State, who are ex-officio members of the BOG.
- 26.** Hence, the defence of delay taken by the respondents cannot be paid heed to.
- 27.** Insofar as the *locus standi* of the petitioner is concerned, he was a part of the meeting confirming the impugned decision and was the sole objector to the impugned amendment.

- 28.** The very fact of the petitioner being recognised as a part of the said meeting indicates that he had the *locus standi* to be a part of the meeting, *prima facie* as a member of the BOT. If the respondents were to challenge his membership of the BOT, it was for the respondents to plead and prove the same in accordance with law, which, having not been done, it does not lie in the mouth of the respondents to deny the *locus standi* of the petitioner, even as an integral part of the functioning of the Institute, to prefer a challenge to the paradigm alteration of the Memorandum of Association of the Institute.
- 29.** In view of the above discussions, the impugned decision of the BOG of the Institute taken on May 30, 2017 and subsequently confirmed by the BOG in its further meetings, including that dated August 5, 2016 cannot be sustained.
- 30.** Accordingly, WPO No.1137 of 2023 is allowed on contest, thereby setting aside the impugned decision of the Board of Governors by the resolution adopted by it on May 30, 2017 and its subsequent confirmations.
- 31.** There will be no order as to costs.
- 32.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)