

(2014) 12 MAN CK 0005
In the Manipur High Court
Case No : Writ Petition (Civil) No. 349 of 2012

Abdul Manan Khan

APPELLANT

Vs

The State of Manipur

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 4 GLT 595

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : Ng. Kumar, Advocate for the Appellant; A. Vashum, G.A. and M. Hemchandra, Advocate for the Respondent

Judgement

N. Kotiswar Singh, J.—Heard Mr. Ng. Kumar, learned counsel for the petitioners and Mr. Aleng Vashum, learned Government Advocate for the State respondents as well as Mr. M. Hemchandra, learned counsel for the respondent No. 4.

2. The present writ petition has been filed by the petitioners who are claiming to be the members of the School Management Committee of Khergao Junior High School, Khergao which was constituted by an order of the Zonal Education Officer, Zone-II on 9.12.2011 which was dissolved by an order dated 02.5.2012 passed by the Zonal Education Officer, Zone-II with immediate effect in public interest which is being challenged in the writ petition.

3. According to the petitioners, the School Management Committee of the Khergao Junior High School (Aided) was constituted vide order dated 9.12.2011 for a term of three years with effect from the date of the first meeting. It has been stated that the first meeting of the School Management Committee was held on 20.2.2012, and as such the Committee was to continue upto 19.2.2015. However, according to the petitioners, even before completion of one year of its existence, the School Management Committee was dissolved by the impugned order dated 02.5.2012 with immediate effect in public interest without giving any notice to the petitioner. According to the petitioners, while the School

Management Committee so constituted in 2011 was functioning smoothly, the petitioners received a communication on 18.5.2012 with a copies of two documents viz. (i) a letter of D.I., Zone-II dated 25.4.2012 and (ii) another letter dated 30.4.2012 from the Circle D.I. of Schools. The said letter dated 25.4.2012 of the D.I. Zone-II related to an explanation call issued to all the teachers except Basirjan Begum on the ground that they were not attending the school regularly without any authority and to explain why disciplinary action should not be taken against them. The letter dated 30.4.2012 is the letter written by the Circle D.I. Schools to the Zonal Education Officer, Zone-II, Porompat requesting for dissolution of existing School Management Committee and for constitution of a new School Management Committee on the ground of irregularities and non-attendance of the teachers. Thereafter, the petitioners were communicated with the impugned order dated 02.5.2012 which they claimed to have received on 22.5.2012 ordering the dissolution of the School Management Committee. The impugned order reads as follows:

"GOVERNMENT OF MANIPUR OFFICE OF THE ZONAL EDUCATION OFFICE, ZONE. II.

ORDERS ----- Porompat, the 2nd May, 2012.

No. 3/5/95-ED(ZEO.II): As per inspection report of the Circle Deputy Inspector of Schools, the School Managing Committee of Khergao Junior High School (Aided) which was approved earlier is hereby desolved with immediate effect in public interest.

Sd/- (Th. Chandrajini Devi) Zonal Education Officer, Zone.II Government of Manipur.

Memo No. 3/5/95-ED(ZEO.II):

Porompat, the 2nd May, 2012.

Copy to:-

1. The Chairman, School Managing Committee of Khergao Junior High School (Aided).
2. The Secretary, School Managing Committee of Khergao Junior High School (Aided) for information.
3. The Headmaster, Khergao Junior High School.
4. The Circle D.I. of School, ZEO, Zone.II for kind information and necessary action.
5. Guard File.

Sd/(Th. Chandrajini Devi) Zonal Education Officer, Zone.II. Government of Manipur."

4. The petitioners have now challenged the said dissolution order in this writ petition primarily on the ground that provision of Section II of Chapter VI of the Manipur Education Code, 1982 which governs the constitution, dissolution etc. of School Management Committee had not been followed. It has been stated that as per Rule 3 of the said Section, a School Management Committee could be dissolved only on two grounds namely, (i) suspected cases of misappropriation of school Fund and (ii) gross violation of rules and regulations and orders of the Government.

Learned counsel for the petitioners however submits that no valid ground or reason has been spelt out in the impugned order of dissolution neither an opportunity of being heard to the petitioners was given before issuance of the impugned order. Accordingly, the same has been challenged as violative of Article 14 of the Constitution of India and not in conformity with Chapter VI of the Manipur Education Code.

5. The State respondents have filed their affidavit-in-opposition in which it has been stated that the order of dissolution was issued on 22.5.2012 and not on 02.5.2012 as being clarified by the corrigendum dated 22.5.2012 which, however, has been concealed by the petitioners.

It has also been stated by the State authorities that there were three Inspection Reports prepared on 19.3.2012, 7.4.2012 and 25.4.2012 by the concerned D.I. of Schools which were submitted to the Zonal Education Officer, Zone-II. These Inspector Reports clearly reveal that the school was not functioning properly. However, these reports do not speak of financial misappropriation. The said copies of the Inspection Reports have been annexed to the affidavit-in-opposition filed by the Respondents No. 1 to 3 as Annexure R/1 (colly) also and reproduced hereunder:-

"To,

Type Copy

The Z.E.O., Zone-II, Porompat

Subject:- Submission of Inspection Report, Khergao Junior H/school (Aided)

Sir,

I, the undersigned have the honour to state that I have inspected to this school on 11/3/2012 at about 11.30 A.M. the school has four rooms, out of four rooms one is staff and another two rooms for students and there is no partition, the remaining one is the office of Khergao Teachers' Association. The school has not having facilities of Urinal and Toilets and I can't see any one student in the school.

Whereas, as there is no student, they have not run cooks for the children. The school is also a basically a school. The school has no any development from now as before. So you kindly take up the appropriate action in time.

Date/Portmat The 11th March 2012

yours faithfully Th. Nabakumar Singh D.I. Zone-II

"Type Copy

NAME OF THE INSTITUTION: Khergao Junior High School (Aided) DATE OF INSPECTION: 19/3/2012 CONDITION OF THE SCHOOL:

I inspected to this school on this day at about 12 noon. I have found that teachers irregularities in the school. The school has five teachers. Out of five teachers, there is four approved teachers and the remaining one is unapproved teacher and I have not seen any one student in the school. The Teaching Staff Table cloth was also full of dust. It is very sorry to see the circumstances. On that day I have marked the periods of absent of all the teachers. Those absentee teachers are given below:

1. Safeera under graduate approved teacher had absented w.e.f. 10th March to 19th March 2012
2. Wazid under graduate teacher had absented w.e.f. 19th February 2012 to 19th March 2012.
3. the case of Ferojuddin absentism should be considered by the SMC of this school.

Submitted to the authority concerned for kind appropriate action in respect of the above school in public interest.

Signature of the Head of the School

yours faithfully

Deputy Inspector of Schools Zonal Education Officer, Zone-II Government of Manipur"

"INSPECTION REPORT

Type Copy

NAME OF THE INSTITUTION: Khergao Junior High School (Aided) DATE OF INSPECTION: 7/4/2012 CONDITION OF THE SCHOOL:

I, have visited on 7th April 2012 to this school at about 11 A.M. when I arrived there Mrs. Basirjan Begum was there and I have checked all the attendance

register of teachers and students and marked them "A" for unauthorized absent. After marking "A" to the attendance register at about 11.45 they were arrived in the school. They were requested for sign but, I refused and then closed the school. On that day was also no student in the school. I have warned them you don't do such practice in future.

Submitted to the authority concerned for kind appropriate action in respect of the above school in public interest.

Signature of the Head of the School

yours faithfully

Deputy Inspector of Schools Zonal Education Officer, Zone-II Government of Manipur" -----

6. The respondents authorities have submitted that the School Management Committee were duly notified of the lapses on the part of the teachers and also about mis-management vide letter dated 25.4.2012. The State respondents have also annexed a document in Annexure R-1 colly in which serious allegation of misappropriation of school grants in the financial years 2008-09, 2009-10, 2010-11 and 2011-12 by the School Management Committee amounting to Rs. 69,614/- has been made. It has been also submitted that before the impugned order of dissolution was issued, the School Management Committee was sufficiently informed of the serious charges of mis-management. However, there is nothing to indicate that the School Management Committee had been informed of the alleged misappropriation of school grants.

7. Considering the dispute involved in the writ petitions, this Court requisitioned the file relating to the dissolution of the School Management Committee which was produced by the learned Government Advocate before this Court at the time of hearing.

8. Mr. Ng. Kumar, learned counsel for the petitioners has vehemently urged that a School Management Committee could be dissolved by the D.I. of Schools and re-constitute the same if the D.I. of Schools considered it necessary for suspected cases of misappropriation of school funds or gross violation of rules and regulations and orders of the Government by the School Management Committee with prior approval of the Inspector of Schools as provided under Rule 3 of the Section II of the Manipur Education Code. It has been submitted that however, in the present case, no case has been made out either for misappropriation of school funds or gross violation of the rules and regulations and as such, the impugned order of dissolution cannot be sustained. It has been also submitted that letters dated 25.4.2012 and 30.4.2012 merely indicate the absence of certain teachers and this cannot be a ground for dissolution of the School Management Committee in terms of the rules as mentioned above.

9. Mr. Aleng Vashum, learned Government Advocate, however has submitted that there were sufficient materials for dissolution of the School Management

Committee and as the School Management Committee were amply notified before the said dissolution order was issued as indicated in the letter dated 18.5.2012 written to the Head Master/Secretary of the School.

10. This Court has gone through the records produced by the State respondents. A perusal of the record would indicate that the functioning of the school has been very unsatisfactory. The Inspection Reports dated 11.3.2012, 19.3.2012 and 25.4.2012 portrayed a dismal picture of the school which shows not only absence of students but also of teachers for a long period of time. The records also show that certain amount of grants released by the State Government have been drawn by the school authorities. Subsequently, a report was submitted by the D.I. of Schools to the Director of Education (S) on 15.6.2012 where various irregularities including misappropriation of funds have been highlighted which is also annexed as Annexure-R/1 (Colly) to the affidavit-in-opposition filed by the State respondents.

11. Having heard the learned counsel for the parties and also on perusal of the records, the following aspects emerged:-

(i) There are certain materials which indicate the existence of irregularities in terms of the management of the school. The Inspector Reports as available in the record had indicated absence of not only students but also of teachers on several occasions.

(ii) There are serious charges of manipulations/fabrication of school records, particularly of the attendance register of the teachers and students.

(iii) There are also serious allegation of misappropriation of funds.

12. However, even though there are serious allegations about mis-management and financial mis-management of the school, there is no document on record to conclusively establish the fact that school authorities have been notified of such irregularities before the impugned order of dissolution was issued on 02.5.2012. The letters dated 25.04.2012 can not in any way be said to be noticed from the authorities for the proposed action of dissolution. The other letter dated 30.04.2012 was not advertised to the School Management for the purposed action but a proposal by the Circle D.I., Schools to the ZEO, Zone II for dissolution of the Committee, which the petitioners claim not to have received. Thus, the contention of Mr. Ng. Kumar, learned counsel for the petitioner that the School Management Committee was not given opportunity of being heard before the dissolution order was issued seems to have substance.

13. A reading of the Rule 3 of Section II of the Manipur Education Act, 1982 would show that there is no provision for giving a prior notice or giving a show cause notice before dissolving a School Management Committee. However, it is now well settled that if an action of the authority entails civil consequences and adversely affects a vested right, the principle of "audi alteram partem" can be read into the statute. In *Manohar Anchule Vs. State of Maharashtra* and

Another, , Hon"ble Supreme Court observed as follows:-

"23. Thus, the principles of natural justice have to be read into the provisions of Section 20(2). It is a settled canon of civil jurisprudence including service jurisprudence that no person be condemned unheard. Directing disciplinary action is an order in the form of recommendation which has far reaching civil consequences. It will not be permissible to take the view that compliance with principles of natural justice is not a condition precedent to passing of a recommendation under Section 20(2).

24. In Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, the Court stressed upon compliance with the principles of natural justice in judicial or quasi-judicial proceedings. Absence of such specific requirement would invalidate the order. The Court, reiterating the principles stated in the English Law in R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd. (1924) 1 KB 171 : 1923 All ER Rep 150, held as under:

"8. ...The following classic test laid down by Lord Justice Atkin, as he then was, in R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd. (1924) 1 KB 171 : 1923 All ER Rep 150 (CA) and followed by this Court in more than one decision clearly brings out the meaning of the concept of judicial act: (KB p. 205)

"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

Lord Justice Slesser in R. v. London County Council, ex p Entertainments Protection Assn. Ltd. (1931) 2 KB 215 (CA) dissected the concept of judicial act laid down by Atkin, L.J., into the following heads in his judgment: (KB p. 243)

"Wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority--a writ of certiorari may issue."

It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising a judicial or quasi-judicial act cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, ex hypothesi it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it."

25. Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall so

demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature.

In the present case, it is seen that the School Management Committee constituted in 2011 for three years has a vested right to continue for 3 years after its first meeting i.e., upto 19.2.2015 and such a Committee can be dissolved only on the ground contained in the Rule 3, after giving due notice to it, as any dissolution and prior to expiry of its term would lead to premature termination of its term, thus adversely affecting its right.

Further, there is no reason assigned in the dissolution order. It is not known for what reasons, the School Management Committee had been dissolved. Though the authority have sought to explain in the affidavit-in-opposition, that the School Managing Committee had been dissolved for gross mismanagement and suspected cases of misappropriation of fund, the records do not indicate that the authority had come to any or both the conclusions as regards suspected cases of misappropriation of school fund and gross violation of rules and regulations before the dissolution order was issued. The authorities were required to come to specific conclusions as regards these issues based on certain materials before dissolving the School Management Committee. The School Management Committee were informed of the proposed action of dissolution based on the materials indicating gross violation of rules and regulations and suspected case of misappropriation of school fund.

14. Therefore, this Court holds that even if there is no provision for giving an opportunity to be heard/notice to the School Managing Committee before its dissolution under Rule 3, this requirement has to be read into it and hence, the dissolution order is vitiated being in violation of the principle of natural justice as no such opportunity of being heard was given to the School Management Committee. Accordingly, the impugned order dated 2.5.2012/22.5.2012 (which had been corrected vide corrigendum dated 22.5.2012) is hereby quashed.

However, in spite of allowing the writ petition, considering the serious nature of allegations made against the School Management Committee, the authorities would be at liberty to take appropriate action against the School Management Committee of Khergao Junior High School (Aided) in accordance with law after giving due notice as observed above.