

(1962) 09 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 221 of 1962

Ajit Kumar Sarma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 25-09-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Gauhati University Act, 1947 — Section 21
Gauhati University Amendment Act, 1960 — Section 17

Citation : AIR 1963 Guw 46

Hon'ble Judges : G. Mehrotra, C.J.; C. Sanjeevarao Naidu, J

Bench : Division Bench

Advocate : J.C. Medhi and K.C. Bezbarua, for the Appellant; R.K. Goswami, Sr. Govt. Advocate and M.C. Pathak, Jr. Govt. Advocate, for the Respondent

Judgement

G. Mehrotra, C.J.

1. This rule arises out of an application under Article 226 of the Constitution. The Petitioner has been working as a Lecturer in the Handique Girls' College at Gauhati since 1947. This college has been recognised by the Gauhati University as such. The Petitioner applied for leave with pay from 2nd January 1962 to 5th March 1962 with a view to contest a seat for Parliament and the leave was granted by the Governing Body of the College by its resolution dated the 9th March 1962. The Petitioner being defeated in the election sought permission of the Governing body to rejoin his duties and the Governing body by its resolution No. 2 dated the 9th March 1962 permitted the Petitioner to rejoin his duties after the expiry of the leave period that is on the 6th March 1962. The Petitioner joined his duties in accordance with the resolution of the Governing Body on 6th March 1962 and continued to work as a lecturer till the 5th April 1962.

On that date the Principal of the Handique Girls' College by a letter put the Petitioner on compulsory leave without pay till the end of next Academic Session that is, 31st May 1962, as required by the Director of Public Instruction.

It appears that the resolution by which the Governing Body allowed the Petitioner to rejoin his duties in March 1962 was sent to the Director of Public instruction

The Director of Public Instruction replied to the Governing Boay that they did not approve of the resolution, of the Governing Body in view of R. 7 which was in fore at that time On receipt of the instructions by the Director of Public Instruction the Governing Body rescinded its earlier resolution and passed a resolution to the effect that It was not in a position to give effect to its earlier resolution. By the same resolution the Governing body further, gave leave without pay to the Petitioner till the next academic session it is against this resolution that the present petition has been filed before us.

2. The Petitioner has impleaded in this petition the-governing Body of the Handique Girls" College as opposite party No. 30 Sri Suresh Chandra Rajkhowa, Director of public, inspection, Assam, Shillong as opposite party Ho. 2, and the State of Assam as opposite party No. 1.

3. The contention raised by the Petitioner is that the roles relied,, upon by the Director of Public Instruction, the Governing Body and the State of Assam are ultra vires and cannot be given effect to. The Petitioner has on these facts, asked for a number of reliefs. It is not necessary for us for the disposal of the present petition to enumerate in detail the relief"s claimed by the Petitioner It is sufficient to point out that in fact the contention of the Petitioner is that the Governing Body of, the Antique Girls College is a public and statutory on and as such this Court under Article 226 of the Constitution can "issue a writ of mandamus directing it not to give effect to the letter issued by the Director of public instruction.

Apart from that the contention Is that this Court can also issue mandamus directing the State of Assam and the Director of Public Instruction, Shilling not to give effect to the letter of, the Director of Public Instruction dated the 20th March, 1962 addressed to the Principal and Secretary Handique Girls" College. The state of Assam has put In appearance and the Governing Body of the Handique Girls" College is also represented before us. The arguments have covered a very wide field. But it is not necessary for the purpose of disposal of the present case to go into the details of the arguments.

4. Shortly put, the argument advanced by the counsel for the State is that it was not in the nation of a statutory obligation cast upon the Director of Public Instruction to issue certain instructions-to the Principal and the Secretary Handique Girls", College to refrain from acting under certain resolution passed by the Governing Body of the College and thus as there is no statutory duty cast upon the Director of Public Instruction no writ of mandamus can be issued by this Court under Article 226 of the Constitution in effect the argument is that the communication sent by the Director of Public Instruction Is in the nature of instructions issued, by hint from time to time in the exercise of his supervisory power and thus this Court will not interfere with such administrative instructions

issued by the, Director of Public, Instruction

It is further contended that the Government made certain conditions necessary before grants could be...given to an aided educational institution and: the Governing Body of the Handique Girls' College accepted those conditions. One of the conditions was that the Government could frame certain rules or could issue instructions in relation to the maintenance of the discipline in the institution itself and the Governing Body and the teachers accepted the grant on condition that, the Government could regulate the discipline of the institution. Having accepted the grant on those conditions, it is not open now to the Governing Body or to the Petitioner who was also a teacher to go back upon those conditions.

It is further contended that as those conditions were accepted by the Governing body, they are in the nature of a contractual obligation and in the exercise, of its power under Article 226 of the Constitution this Court will not enforce the contractual obligation. The remedy of the Petitioner if any, Is to approach, civil court for the enforcement of that contractual obligation.

5. This argument. In our opinion presupposes that ed also by the Governing Body in their resolution dated 4-4-62 has no statutory force

6. It will be convenient at this stage I of refer to the resolutions passed by the Governing body. The first; resolution was passed on the 9th March 1962 in which it is mentioned that in View of the resolution No. 1 adopted in the meeting of the Governing Body held on. 16-12-61 and resolution No. 1 adopted In the ""meeting of the Governing Body held on" 24-3-60;""copies of which were forwarded to the Director of Public-Instruction from the Secretary of the Governing Body the applicants on leave referred to in the resolution No. 1 be allowed to rejoin their duties after the expiry of theirs leave and to continue until further orders Thereafter on the 20th March 1962 after receipt of the copy of this; "resolution the Director of Public Instruction wrote to the Principal, and Secretary Handique Girls College-as follows.

In inviting a reference; to your letter dated 1953-62, I have the honor to regret being unable to approve of the resolution taken by Governing; Body of your college with regard allowing Sarbasr I.S.C. Goswami, P.C Baman A.K Sharma and K.P. Sen, to rejoin their duties.

Am further to say, that the Assam Aided College Employees were, framed after the due consultation with the University and the Assam College Teachers' Association.

On the receipt of this" letter from the Director of Public mstrutin Governing Body passed the following arson the 4th April 1962:

view of the fact that D. P. I. has not approved the resolution Nos. 1 and 2 adopted in the meeting the Governing "Body held on 9-3-62 allowing Sarbasri Goswamil P.C Barman, A. K. Sharma and I. C. P. to rejoin their duties the Governing Body notes with, regeret that the said resolution cannot be given

effect to and resolved that S.C. Goswami, P.C. Barman, Shri A.K. Sharma and K. P. Saha be granted leave as per rule.

The letter sent" by the. Director of Public instruction and the resolution passed by the Governing Body clearly showed that the Director of Public Instruction relied upon Rule, 7 of the rules regarding conduct and discipline of the employees of Aided Educational Institution.

7. reliance was placed by the Director of Public Instruction on any alleged contract arrived at between the Governing Body and the State of Assam as a condition for the grant. This communication clearly refers to Rule 7 and points out clearly that the resolution passed by the Governing Body was in contravention of Rule 7 and of thus the Director of Public Instruction could not give its approval - to it and the resolution also referred to this very communication. In the light of these two documents the argument "of the counsel for the State cannot be accepted that this traction was taken by the Director of Public Instruction under some Implied contract or under some conditions on which the grant was given by the Government. The reference in this communication is clearly to Rule 7 and therefore the question which we are called upon to decide is as to whether Rule 7 can be regarded as a statutory rule and if we are of opinion that these rules are of no statutory force, then obviously the direction issued by the Director of Public Instruction relying upon Rule 7 and pointing out to the Governing Body that their action was in contravention of Rule 7 cannot be given effect to and this Court can under Article 226 of the Constitution issue direction to the. Director of Public Instruction not to give effect to that, direction.

8. The only question therefore, before us is whether these rules have got statutory force. It is contended that the rules were; published, on the 9th March 1961. The Gauhati University. Act was amended on the 1st May 1961 by the Gauhati University (Amendment) Act, 1960 Assam Act No. 11, of 1961 and by Section 17 of the amending Act the following proviso was added to Section 21(g) of the parent Act:

Provided that no Statutes relating to the management of Colleges and Halls shall apply to Government colleges and Government aided colleges in respect of which the State Government shall make necessary rules in consultation with the University.

Section 21(g) of the Gauhati University Act, 1947 reads as follows:

subject to the provisions of this Act the statutes may provide for ".all or any" of the following namely:

the condition for the recognition by the Executive Council of colleges and Halls not maintained by the University and for the withdrawal of such, recognition and the management of such Colleges and Halls.

In the exercise of the powers conferred on the University u/s 21(g) of the

Gauhati University Act, the Gauhati University framed certain statutes. The statutes provide that the affiliated institutions must have a governing body and thus the Gauhati University provided in these statutes the method of management of these affiliated institutions. There were some rules framed by the University. But it is clear that the statutes were framed in the exercise of the powers conferred on the University under Section 21(g) and thus the statutes framed by the University have got statutory force and the Governing Body which was created under the statute is a statutory body.

9. The proviso "added" to Section 21(g) of "that parent Act by Assam Act II of 1961 consists of the parts it may be argued that the effect of the first part of the proviso is that the statutes which were framed by the University will no longer apply to "Government Colleges and the Government aided colleges - and further" II confers power on the State Government to frame necessary rules in consultation - with the University. Even if the argument of the State counsel is accepted that the effect of the first part of the "" proviso is that the statutes no longer apply to this Institution, It cannot be said that the rules which were published on the 9th March 1961 were rules framed in the exercise of any power conferred, on the Government under the aforesaid proviso. The proviso itself came into force on the 1st May, 1961 and the proviso clearly lays down that the rules shall be made in consultation with the University, it does not appear that the rules which were published on the 9th March 1961 were subsequently declared to have been made in the exercise of the power conferred on the Government under the proviso or that the Government framed those rules in consultation with the University. In this view of the matter it cannot be said that the rule relied upon by the Director of Public Instruction was a rule which " had statutory force and was framed under the proviso to Section 21(g) of the Gauhati University Act.

10. The State counsel" and the counsel for the Government Body realising this difficulty," have not based their case on the ground that the" rules have got any statutory force as we have already pointed out in the earlier part of our judgment, reliance is placed on the fact that the rules impose the conditions: which were necessary to be followed by the Governing Body before they were entitled to get any grant or in effect the rules impose the conditions on. which the Governing Body was given the grant and the. Governing Body accepted, the grant it must further pointed out that there is a general; power in the Government to supervise the working of the educational institutions and these instructions were issued not in the exercise of the statutory power but they were only directions issued by "the Government. As we have already pointed out if these rules have got no statutory force, that event we can under Article 226 of the cons title issue a mandamus, directing the Director of Public instruction who is a public authority, to refrain from giving effect to a provision which has got no statutory force.

11. The next contention is that the Governing Body is a statutory body and if

the" Governing Body has not canted. out any conditions of the terms of service of the Petitioner the remedy of the Petitioner is to go to the civil court to enforce his right. The Petitioner has no right which he can enforce by means of a petition under Article 226 of the Constitution. It is true that the foundation for the exercise of the powers under Article 226 of the Constitution is the existence of a right, but it does not necessarily mean that there should be a fundamental right or a right to property which the Petitioner must possess before he can come to this Court If the Petitioner was an employee of the Handique Girls" College, he was granted leave with pay and after the expiry of leave he was allowed by the Governing Body to rejoin his duties and under instructions issued by the Director of Public Instruction the Governing Body afterwards directs the Petitioner that his save will be considered to be leave, without pay, his right certainly has been affected so as to entitle him to approach this Court for a proper writ.

12. The powers of this Court are not confined to Issuing directions in the nature of mandamus, certiorari or out warrantor the writs which were enforced in that English courts but the words of the article are wide enough to give us power to issue any direction which this Court considers proper in the circumstances of the case and the direction can be issued for any purpose under Article 226 of the Constitution. If under those circumstances a public authority directs the Governing Body of a public institution to carry out the terms of a certain rule which in the opinion of this Court has got no statutory force and which was issued as a sort of command on the Governing Body to carry out its term, this Court in our opinion has got ample jurisdiction to issue a writ of mandamus directing the public authority not to give effect to such a direction.

13. The question whether the order issued is in the nature of an administrative order or a judicial order is Only relevant when this Court issues a writ of certiorari. But when a mandamus is to be issued, the question Whether the order is in the nature of a direction or a Judicial order is of no consequence and it need not be emphasised that the only ground oh which the Director of Public Instruction issued the direction to the Governing body and refused to approve of the resolution and the only ground on which the Governing Body acted, was that the resolution was in contravention of Rule 7 and if rule 7 by itself has got-no statutory force, then there should " be no difficulty in issuing a writ mandamus directing the opposite parties not to give effect to the direction.

14. it is not a case where the Governing Body has applied its independent mind and has exercised its power as an independent body to rescind its own earlier resolution The Governing Body has acted entirely on the direction issued by the Director of Public Instruction. The Governing Body may have rightly thought that as they received the direction from the Government, they could not disobey the Instructions Issued by the Director of Public Instruction. But that is not a relevant consideration for refusing to issue a mandamus when we are of opinion that Rule 7 on which the Director of Public Instruction has relied has got no statutory force. In this view of the matter it is not necessary for us to examine

the various circulars and the communications and the argument advanced by the State counsel that the Governing Body and the Petitioner himself had accepted those rules and thus they formed part of the terms of an implied contract arrived at between the Government and the Petitioner. In the result therefore, we allow this petition and direct the opposite parties the Governing Body of the Antique Girls' College Gauhati and the Director of Public Instruction,

Assam not to give effect to the letter dated 20th March, 1962 issued by the Director of Public Instruction and further direct the Governing Body not to give effect to its resolution dated the 4th April 1962 which is based entirely on the instructions issued by the Director of Public Instruction on the 20th March 1962. But in the circumstances of the case the parties will bear their own costs for this petition.

15. Mr. Goswamy for the State prays that he should be granted leave to appeal to the Supreme Court under Article 132 of the Constitution. In our opinion it does not involve any question of the interpretation of the Constitution and this case cannot be certified to be a fit one for appeal to the Supreme Court under Article 132 of the Constitution. The prayer is accordingly rejected.

C.S. Nayudu, J.

16. I agree.