

(1996) 08 OHC CK 0012

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2781 of 1996

Ashis Kanungo and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-08-1996

Acts Referred:

Orissa Education (Establishment, Recognition and Management of Private Colleges) (Amendment) Rules, 1979 — Rule 3
Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 — Rule 25

Citation : (1996) 2 OLR 348

Hon'ble Judges : S.C. Datta, J; R.K. Patra, J

Bench : Division Bench

Advocate : Pradipta Mohanty, D.N. Mohapatra, G.S. Sahoo and J. Mohanty, for the Appellant; A.G.A., R.C. Pattnaik, M. Bisoi and A. Dash for opp. parties 3 to 8, M.M. Senapati for opp. party 5 and Pradyot Mohanty for opp. party 9, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—Who can be regarded as an "eminent Educationist" for the purpose of being nominated as the President of the Governing Body of an aided college is the sole question that arises for consideration in this writ petition.

2. The petitioners are the residents of Kakatpur and were members of the outgoing Governing Body of the Mangala Mahavidyalaya, Kakatpur. They assail the validity of the nomination of Manmatha Kumar Swain (opp. party No. 3) made by the State Government in their letter dated 29-12-1995 (Annexure-1) to be the President of Mangala Mahavidyalaya, Kakatpur and the consequent reconstitution of the Governing Body made by the Director, Higher Education, Orissa, Bhubaneswar in his office order No. 9056 dated 23-2-1996 (Annexure-2).

3. The case of the petitioners is that opp. party No. 3 is not an "eminent Educationist" and, as such/ he is not eligible to be nominated as the President of

the Governing Body of the college. According to them, opp. party No. 3 has absolutely no educational background and he is otherwise a person of doubtful integrity. When he was the Storage Agent for Kakatpur--Astaranga Blocks during 1989-90 and 1990-91, he misappropriated huge stock of essential commodities and audit report dated 17-12-1994 (Annexure-3) submitted by the Special Audit Party is the proof of his mis-demeanour.

4. Learned Additional Government Advocate produced before us the relevant Government file in which the matter relating to nomination of opp. party No. 3 as the President of the Governing Body of the college was dealt with. He submitted that on the basis of the recommendation made by the Minister, Higher Education to the effect that opp. party No. 3 is an "eminent Educationist", the Government nominated him as the President. Opp. party No. 3 has filed counter affidavit wherein he has asserted that he is involved in the educational activities in the locality. He is the President of the Village Education Committee and has contributed for establishment and running of Mangala Mahavidyalaya, kakatpur, Netrananda Sahoo Women's College. Kakatpur, Ratanpur Science College, Ratanpur, Astaranga Girls' High School and Astaranga College at Astaranga and is a Block Congress Committee Vice-President. He was also the Youth Congress President of Kakatpur Block for a decade and the members of his family and his forefathers were freedom fighters and the family members now enjoy pension under the Central Government Freedom Fighters Pension Scheme. Regarding the special audit report, the opp. party No. 3 without disputing the finding recorded in it claims that an amount more than rupees four l3khs is due to him from the Civil Supplies Corporation.

5. It is not in dispute that the Mangala Mahavidyalaya, Kakatpur is an aided educational institution within the meaning of Section 3 (b) of the Orissa Education Act, 1969. At this stage we may examine the relevant rules for the purpose of finding out the meaning of the expression "eminent Educationist". Prior to the commencement of the Orissa Education (Establishment, Recognition and Management of Private Colleges) Rules, 1991 (hereinafter referred to as "the 1991 Rules"). Orissa Education (Management of Private Colleges) Rules, 1979 were in force. Some of those rules came to be amended vide S.R.O. No. 1 of 1989, one of such rules being the second proviso to Sub-rule (3) of Rule 3 which read as follows :

"Provided further that notwithstanding anything contained in these rules, the State Government in the interest of the institution shall have the power to nominate a person interested in the field of education as the President of the Governing Body".

The aforesaid 1979 Rules alongwith the amendments were repealed by the 1991 Rules and the expression "a person interested in the field of education" has come to be replaced by the words "any eminent educationist". The relevant part of Rule 25 of 1991 Rules is quoted infra :

"25. Governing Body of Aided College--(1) Notwithstanding anything contained in these rules as soon as the College becomes an aided College, the Governing Body of the College shall be reconstituted in the following manner :

(i) The Collector/Additional District Magistrate/Sub-Collector of the Sub-division in which the College is situated shall be the ex-officio President of the Governing Body and the Principal of the College or the teacher in-charge of the Principal shall be its ex-officio Secretary :

Provided that Government may nominate any eminent educationist to be the President who shall continue as such during the pleasure of the Government. In such cases the Collector/Additional District Magistrate/. Sub-Collector shall be a member :

Provided further..... (ii) (iii) (iv) (v) Four persons of the locality interested in the field of education which..... xx xx xx"

6. The question as to who can be said to be an "eminent Educationist" had earlier engaged the attention of this Court in OJC Nos. 3130 and 3359 of 1992 (disposed of on 1-3-1993: Mardaraj Mohan Senapati v. State and Ashok Kumar Sahoo v. State). Speaking for the Bench Hansaria, C. J. (as he then was) observed in paragraphs 3 to 6 of the judgment as follows :

"3. As the question at hand is likely to come up in many other cases, it was thought proper to hear Dr. S.C. Dash, an eminent Educationist of the State by his right, to know his views in the matter. Dr. Dash has accordingly addressed us and he first states that the word "Education" is derived from the Latin word "educa" which means bringing out of latent faculties which Dr. Dash thinks, can be so done only by a teacher. So, for a person to be described as an Educationist he must be a teacher. It is then submitted that the word "eminent" signifies that the Educationist must rise above the ground or, to put it differently, must be above ordinary.

3. (sic) Dr. Dash, however, submits and rightly, that the expression "eminent Educationist" cannot be given a fixed meaning and it has to vary from situation to situation and from place to place, inasmuch as a person to be accepted as an eminent Educationist, if the context be the entire country, even a person so regarded in a State would not foot the bill. Similarly, if the entire State be the consideration a district level eminent Educationist would not fulfil the criteria. As, however, we are concerned with the Governing Bodies of colleges. Dr. Dash submits that this expression, which finds place in connection with Governing Bodies of aided colleges, may not be so strictly construed especially when for unaided colleges, which also impart the same education, this requirement is not necessary.

5. It is finally urged that the duties entrusted to the Governing Bodies of colleges may also be kept in mind in this regard. The only function which an Educationist may be called upon to discharge may have something to do with Clauses (c) and

(d) of Rule 29 of the new Rules which has specified the powers and functions of the Governing Body. These clauses relate to imparting of instruction according to the standard prescribed by the University and appointment of staff in accordance with the provisions contained in the Act, rules and instructions of the Government. If these two functions of the Governing Bodies are borne in mind, so also the fact that the requirement at hand is not to be fulfilled for a person to become President of an unaided college, the learned counsel submits that a re-thinking is required as to whether the condition imposed by the proviso is at all necessary, which, apart from anything else, invites unnecessary litigation and puts the Court in a difficult position to find out in every case whether the person concerned can be said to be an eminent Educationist. 6. We agree with Dr. Dash. Let the rule-making authority consider whether the aforesaid provision finding place in the new 1991 Rules really advances the object of the Act, and whether the amended requirement of the old Rules with such change as deemed necessary should not be accepted as a criterion."

In that case nomination of one M. L. A. and an Advocate as Presidents of the respective Governing Bodies were challenged. The Court found that except that one was an M. L. A. and another an Advocate, there was no material available to show that they were Educationists. In the circumstances, the Court set aside their nominations. We find that despite a clear and categorical observation made in that case calling upon the rule-making authority to consider whether the expression "eminent Educationist" needs any definition or elucidation, the Government seems to have not taken any tangible step in the matter.

7. In the backdrop of the observation of this Court in Mardaraj Mohan Senapati (supra), we may examine the matter to find out as to who can come within the sweep of the expression "eminent Educationist". The meaning of the word "eminent" does not cause any problem. The ordinary dictionary meaning of "eminent" is rising above others : conspicuous: distinguished : exalted in rank or office.

Who is an "Educationist" ? The New Oxford Illustrated Dictionary Vol. I gives its meaning as one who studies the science and methods of education. According to Oxford English Dictionary "Educationist" means one who makes a study of science or methods of education, an advocate of education. In Oxford English Dictionary Vol. III, meaning of "Educationist" is mentioned as specialist in theories and methods of education. In Chambers 20th Century Dictionary, meaning of the said expression is a person skilled in methods of education or teaching : one who promotes education.

8. As already mentioned, the expression "a person interested in the field of education" has been replaced by the expression "eminent educationist" in the 1991 Rules. On perusal of Rule 25 of the 1991 Rules, it would appear that in the first proviso of the said rule, the words "eminent Educationist" find mention whereas in Clause (v) of the said rule, the words "interested in the field of education" find mention. It gives an indication about the mind of the rule-making

authority that so far as nomination of President is concerned, he has to be an "eminent Educationist" whereas in case of nomination of other members of the Governing Bodies, they are to be persons interested in the field of education. There is no doubt in our mind that a person interested in the field of education is different from a person who is an "eminent Educationist" and the rule-making authority has kept that distinction in view while framing Rule 25 of the 1991 Rules.

In course of hearing of the case, we perused the file dealing with the nomination of opp. party No. 3 as President of the Governing Body of the college in question. We found that the Minister while nominating opp. party No. 3 in his letter dated 19-12-1995 took the following facts into consideration. We may quote "that part of the letter :

"Sri Manmath Kumar Swain, At: Olangara. P. O. Lataharan, Dist. Puri is a renowned man of the locality having vast interest in the cases of education. He is associated with establishment and organisation of a number of High Schools and colleges of the area including Kakatpur Anchalik Yuba Parisad, Lataharan High School, Education Committee of Olangara School. Rajiv Gandhi National College for Post-Graduate Study and Oriya Daily "Jatya Janamata", I consider him as an eminent Educationist, capable of managing this institution to the best interest thereof".

The aforesaid letter was received in the department of Higher Education and on its basis the impugned letter dated 29-12-1995 (Annexure-1) was issued nominating the opp. party No. 3 as the President.

9. We have given our anxious and careful consideration to the aforesaid nomination. From the views of the Minister which have been quoted above, we are satisfied that he was primarily guided by the fact that opp. party No. 3 is a person interested in the field of education. The bio-data of opp. party No. 3 as noted by the Minister does not indicate that he was an Educationist far less an eminent one." In our considered opinion, a person to be nominated as the President of the Governing Body must be one who has distinguished himself in the study of the science and methods of education. For the reasons aforesaid, the nomination of opp. party No. 3 as President of the Governing Body of the college in question is vitiated and is liable to be quashed.

10. Shri Mohanty. learned counsel for the petitioners, strenuously urged that the Special Audit report in which the opp. party No. 3 was found to have misappropriated the stock of essential commodities and committed irregularities while acting as Storage Agent should have also been taken into consideration by the Government before he was nominated as the President. It might be that the above fact was not brought to the notice of the State Government and we are sure that had the Minister been aware of the report of the Special Audit, he would not have nominated opp. party No. 3 as the President of the Governing Body of the college in question.

Shri Mohanty also contended that Jambeswar Dixit (opp. party No. 5) who has been taken to be a teachers representative in the Governing Body of the college does not deserve to be nominated as such because of the pendency of criminal case against him u/s 403, IPC (vide G. R. Case No. 764 of 1993 in the Court of the Judicial Magistrate, first Class, Nimapara). We are not expressing any opinion on this contention since the entire Governing Body as constituted by the Director under Annexure-2 is vulnerable because of the illegal nomination of opp. party No. 3 as the President.

11. In the result, the impugned order dated 29-12-1995 (Annexure-1) nominating opp. party No. 3 as the President and the consequential office order dated 23-2-1996 (Annexure-2) constituting the Governing Body are quashed. Opp. parties 1 and 2 are directed to take fresh steps as expeditiously as possible for reconstitution of the Governing Body of the college in question according to law and keeping in view the observations made in this judgment. Till a new Governing Body is reconstituted, the Director, Higher Education, Orissa, Bhubaneswar or any other officer nominated by him will remain in-charge of the management of the college. The Governing Body constituted as per the impugned orders Annexures-1 and 2 will handover the charge of management of the college in question to the Director or his nominee forthwith. The writ application is accordingly allowed.

S.C. Datta, J.

I agree.