

(2001) 02 PAT CK 0086
In the Patna High Court
Case No : C.W.J.C. No. 9461 of 1996

Bishwanath Pathak

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Bihar Sanskrit Shiksha Education Board Act, 1981 — Section 22(2)(ga), 6(2)(n)

Citation : (2001) 2 BLJR 893 : (2001) 2 PLJR 7

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the prayer is to quash the order passed by the Chairman, Bihar Sanskrit Shiksha Board (hereinafter referred to as "the Board"), contained in Office Order No. 7745 dated 9-11-1989 (Annexure 1) communicated to the petitioner by the Secretary of the Board constituting an ad hoc Managing Committee after dissolving the existing Managing Committee of Deo Narayan Mithila Sanskrit Uchcha Vidyalaya, Sabha Sasaula, Sitamarhi. By the said order, Chandradeo Mishra (respondent No. 8) and one Raj Kumar Jha were appointed as the Chairman and the Secretary of the ad hoc Managing Committee respectively along with three other persons to function as the members of the said ad hoc Managing Committee.

2. In short, the relevant facts are that in village Sasaula Sabha of Sitamarhi district, a Sanskrit School known as Deo Narayan Mithila Sanskrit Uchcha Vidyalaya was established in the year 1940 to impart education up to Madhyama standard equivalent to Matriculation. The petitioner's school was recognised by the Bihar Board of Sanskrit Education. In the year 1979, the present Managing Committee of the said School with the petitioner as Secretary was constituted. The petitioner donated land and other assets to the School valued at Rs. 10,000/- and as such he is a donor member of the Managing Committee. The Government of Bihar promulgated several ordinances in the year 1980-81 and

finally enacted Bihar Sanskrit Shiksha Board Act, which came into effect from 24th May, 1982 for development and better supervision of Sanskrit education up to Madhyama standard in the State. According to the Sub-section (2)(n) of Section 6, the Board, subject to the provisions of the Rules made under the said ordinance, is empowered to constitute and dissolve the Managing Committee. According to the case of the petitioner, the Bihar State Non-Government Sanskrit High School (Conditions of Service) Rules, 1976 does not have statutory force and as such, the Board has got no statutory power to constitute or dissolve the Managing Committee of the School. It is stated that the Board has got only supervisory power and it cannot determine the service conditions of teaching and non-teaching staff of any institution and that the competent authority in this regard is the Managing Committee. However, according to the case of the petitioner, by the impugned order the Chairman of the Board passed an order by which the duly-constituted Managing Committee was dissolved and an ad hoc Managing Committee was constituted which is without any authority and totally in a most illegal manner due to some controversy with regard to appointment of the Acting Headmaster of the School.

3. According to the petitioner, after retirement of the permanent Headmaster, the Managing Committee decided to appoint one Ram Chandra Chaudhary, who was more qualified and the seniormost teacher in the School and fulfilled the criteria, as In-charge Headmaster of the School. Respondent No. 7 however, was illegally issuing School Leaving Certificate and posing himself as self-proclaimed Headmaster Incharge of the School and was collecting money from the students for which he was asked to show cause. He, however, approached the Chairman of the Board for upsetting the smooth functioning of the School, which was done with the aid of the Secretary of the Board by constituting ad hoc Managing Committee, vide impugned order (Annexure 1).

4. It appears that earlier also, the petitioner had challenged the validity of the impugned order in this Court in C.W.J.C. No. 10148 of 1989 which on the statement made by the learned Counsel for the Board that the application had become infructuous since the School had been taken over, was permitted to be withdrawn vide order dated 21-2-1990, contained in Annexure 9. However, when the petitioner discovered that no notification of takeover of the School was made, he filed another writ petition, bearing C.W.J.C. No. 2780 of 1990, in this Court for quashing the impugned order. Again the matter came up before the Division Bench which in the order dated 2-5-1990, contained in Annexure 10, recorded that admittedly, the School has been taken over by the State of Bihar by a Gazette Notification dated 18-12-1989 and that after the taking over of the School, the ad hoc Committee loses its sanctity. Accordingly, in the said order (Annexure 10), the Division Bench said that the application, therefore, has become infructuous and was dismissed as such with, further, an observation that if the petitioner has any grievance, he may agitate the same before an appropriate forum. It is alleged that the said Gazette Notification with regard to take over of the School was not given effect to by the Government of Bihar and

the Schools are still managed and controlled through the Managing Committee. It is also alleged that the brothers, uncle and relations of respondent No. 7 are the Members of the ad hoc Managing Committee. The petitioner filed representation to the Secretary and the Chairman of the Board on 13-7-1994 but the said respondent paid no heed to it. Hence, the present writ petition has been filed.

5. No counter-affidavit except that a counter-affidavit has been filed on behalf of the respondent No. 7, who has raised preliminary objection regarding the maintainability of this writ petition on the ground of delay and laches on the part of the petitioner in moving this Court after lapse of seven years and also on account of dismissal of the two writ petitions filed by the petitioner earlier. It is also stated that the Chairman of the Board has constituted the ad hoc Committee for the purpose of further constitution of the Managing Committee and that the action has been taken as per the provisions of the Bihar Rajya Arajkiya Sanskrit School Managing Committee Rules, 1976. It is stated that prior to coming into force of the present Act, there were two rules; one relating to conditions of service of the teachers and another relating to constitution of the Managing Committee. In 1981 Act, provisions were made for making rules. It is submitted that this Court has held that no rules have been framed under 1981 Act but until the rules are framed, the Old Rules 1978 will be deemed to be a rule and the Old Rules shall be applicable for governing the Sanskrit Schools. It is, thus, submitted that by the impugned order Committee has been constituted under 1978 Rules. Respondent No. 7, has also challenged the locus of the petitioner to challenge the validity of his appointment as erstwhile Managing Committee of which he claims to be the Secretary has been dissolved. According to the case of respondent No. 7, the ad hoc Committee which was constituted by the Board was functioning when he was appointed as Headmaster and the same has been approved by the Board on 16-12-1989. Subsequently, in December 1989, the respondent-State issued an Ordinance and thereby the School was taken over. Later, however, as per the decision of this Court in which it has been held that the Ordinance had lapsed and the School had been reverted back under the control of the Committee, which was functioning prior to take over of the ad hoc Committee, which was constituted by Annexure 1 was in force. According to him, at the moment the petitioner, who claims to be the Secretary of the erstwhile Managing Committee which was dissolved and the ad hoc Committee was constituted is not in any way connected with the School in question and the writ petition has been filed with a view to disturbing the school in question. He has also denied the allegation made against him in the writ petition.

6. Mr. Banerji, learned Counsel appearing for respondent No. 7 has raised preliminary objection as regards maintainability of this writ petition as earlier writ petitions filed by the petitioner against the same impugned order were permitted to be withdrawn and also on the ground of delay and laches on the part of the petitioner in moving this Court after lapse of seven years. It is submitted on behalf of the petitioner that there is no delay and laches nor

withdrawal of the earlier writ petitions filed by the petitioner can come in his way from agitating his grievance against continuance of impugned order, contained in Annexure 1. In fact, after the last order dated 2-5-1990 passed by this Court in C.W.J.C. No. 2780 of 1990, contained in Annexure 10, wherein this Court noted that after taking over of the school the ad hoc Committee loses its sanctity, the continuance of the impugned order besides being illegal, arbitrary and without jurisdiction is also in the teeth of the said order of this Court. Moreover, according to the learned Counsel for the petitioner, the Chairman of the Board had no power to constitute ad hoc Committee and dissolve the Managing Committee as has been held by the Division Bench of this Court in the case of Chandra Nath Thakur v. Bihar Sanskrit Shiksha Board 1999(1) PLR 529. The Division Bench has held that in the absence of necessary rules framed under the Act, the Managing Committee of a recognised school cannot be said to have been constituted under the Act and as such, the Board can alone have power to dissolve the Managing Committee in exceptional circumstances and public interest, but not in a routine manner. It is thus submitted that bare perusal of the impugned order (Annexure 1) would show that the Managing Committee was dissolved and the ad hoc Committee was constituted under the orders of the Chairman who had no authority. He also submitted that the earlier writ petitions were not dismissed rather they were permitted to be withdrawn after noticing their statement of the Counsel for the Board and the fact that the School had been taken over and that the Ad hoc Committee lost its sanctity. Thus, according to the learned Counsel for the petitioner, there is no question of applicability of the principle of res judicata on account of the petitioner's moving earlier twice in this Court, in the facts and circumstances of the present case.

7. Mr. Banerji while answering on merit has submitted that the learned Single Judge of this Court in the case of Chandra Kant Jha v. Bihar Sanskrit Shiksha Board which dealing with the question of superannuation age of the Teachers working under Bihar Sanskrit Shiksha Board, has held that the management of the School having no regulation of its own to determine the service conditions of school teachers, Bihar Non-Government Sanskrit High School (Service Conditions) Rules, 1976, though non-statutory, will be applicable being the only legally acceptable instrument spelling out any term and conditions of service and accordingly, it was held that the age for superannuation will be 62 years. It is thus submitted that it is not a fact that no rule existed at the time when the impugned order was passed. As such, according to him, there is no infirmity in the impugned order.

8. I am unable to accept the said submission of Mr. Banerji. In fact, in the case of Chandra Nath Thakur v. Bihar Sanskrit Shiksha Board (Supra), the Division Bench in paragraph 17 has considered the scope of Section 2(dha) and clause (ga) of subsection (2) of Section 22 of the Act and held that clause (ga) of Subsection (2) of Section 22 of the Act confers power upon the Government to frame rules for constitution of the Managing Committee and its powers and functions. Admittedly, no such rule has yet been framed. Therefore, in absence of such a

rule dissolution of a Managing Committee can only be done by the Board in exceptional circumstances and public interest and not in a routine manner. In paragraph 18 of the said Judgment, it has categorically been held that even assuming that the Board has power to dissolve a Managing Committee, such power can only be exercised by the Board and not by the Chairman because in terms of the provisions of the Act, the Chairman of the Board is purely a Chief Executive Officer of the Board and in these backgrounds, the Division Bench has held that the order passed by the Chairman regarding dissolution of the Managing Committee or constitution of the ad hoc Managing Committee has to be held illegal and without jurisdiction and, accordingly, quashed the order impugned therein. The case of Chandra Kant Jha v. Bihar Sanskrit Shiksha Board (supra) was decided by learned Single Judge which, on the face of the judgment of the Division Bench directly covering the field, cannot have any binding effect on the issue in question.

9. Earlier, in the case of Subhash Chandra and Ors. v. State of Bihar, 1994 BBCJ 296, the Division Bench of this Court while dealing with the question regarding promulgation of the Ordinance held that the management of the school will be governed in the same manner as prevailing prior to promulgation of Ordinance No. 32 of 1989 as it lapsed by efflux of time. However, this Court is informed that the State Government had gone up in appeal to the Supreme Court which is still pending. It is not stated by the learned Counsel for the parties that the operation of the said judgment has been stayed. Under such circumstances also, in my opinion, the Managing Committee existed before the promulgation of the said Ordinance cannot be disturbed except as has been held by the Division Bench in the case of Chandra Nath Thakur v. Bihar Sanskrit Shiksha Board (supra). As the impugned order has been passed by the Chairman of the Board who had no authority, its validity cannot be upheld and the constitution of the ad hoc Managing Committee has to be held illegal and without jurisdiction.

10. As regards preliminary objection with respect to delay and laches in filing of the earlier writ petitions by the petitioner against the same impugned order, this Court, in the facts and circumstances aforementioned, does not find any merit in it. In fact, learned Counsel for the petitioner has rightly submitted that the continuance of the impugned order is in the teeth of the order passed by the Division Bench in the earlier writ petition bearing C.W.J.C. No. 2780 of 1990 (Annexure 10), wherein this Court has found that after the taking over of the School, the ad hoc Committee lost its sanctity and thus held that the application has become infructuous and was dismissed as such. However, in view of the liberty given in the said order to the petitioner for agitating his grievance, if any, before an appropriate forum, he filed a representation to the Chairman and the Secretary of the Board on 13-7-1994 giving therein the entire details of the development and entire state of affairs but when no action was taken, he was compelled to file the present writ petition. Thus, in my opinion, the writ petition cannot be held to be suffering from any delay and laches.

11. In the result, the writ application is allowed with cost of Rs. 2,000/- (two thousand) to be paid by respondent No. 7 to the petitioner within two weeks. The impugned order, contained in Annexure 1, is quashed. It is needless to say that after quashing of the impugned order of the Chairman or the Board, the Managing Committee functioning before it would revive and continue, to function till any further action is taken in accordance with the principle decided by the Division Bench in the case of Chandra Nath Thakur v. Bihar Sanskrit Shiksha Board (supra).