

(1971) 02 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 780 of 1970

Brundaban Ch. Mohanty

APPELLANT

Vs

D.I. of Schools and Others

RESPONDENT

Date of Decision : 17-02-1971

Acts Referred:

Orissa Education Act, 1969 — Section 11(1), 7
Orissa Education Code — Article 306, 41

Citation : AIR 1971 Ori 259

Hon'ble Judges : G.K. Misra, C.J;A. Misra, J

Bench : Division Bench

Advocate : G. Rath, for the Appellant; A.G. and R.C. Ram, for the Respondent

Final Decision : Allowed

Judgement

A. Misra, J.—The facts on which this writ application is founded in brief are as follows: The District Inspector of Schools Bhadrak (Opposite Party No. 1) by his letter dated 17-7-70, copy of which is at Annexure 3 to the writ application communicated to the petitioner his approval of the re-constituted Managing Committee of the Kausalya M. E. School at a public meeting. The letter runs as follows :--"Office of the District Inspector of Schools, Bhadrak.

To,

The Secretary, Kausalya M. E. School, Rampur.

Sir,

The Managing Committee reconstituted in a public meeting for Kausalya. M. E. School, Rampur is hereby approved. The names of the members of Managing Committee are furnished below.

XX XX XX Copy forwarded to Sri Brundaban Ch. Mohnnty Ex-Secretary of Kausalya M. E. School for information and necessary action with reference to his application dated 28-6-70. He is requested to hand over charge to the newly

elected Secretary Sri Ram Chandra Muduli immediately for smooth management of the School.

Sd/- K. B. Khuntia

District Inspector of Schools.

Bhadrak."

2. According to the petitioner, he originally founded the School with about Rupees 10,000/- contributed by him and the managing committee which was formed in 1961 has been continuing with some changes of the members therein of which he continues to be the Secretary. Opposite Party No. 1 during his inspection found that the School building had been left without repair and was not sufficient to provide accommodation to the students. Therefore, in his inspection note, he made a suggestion that the President of the School and the Sarpanch, Ramkrushnapur are to take initiative in the matter, call a public meeting and take steps for formation of a healthy managing committee at such meeting. Some villagers claimed to have elected a new managing committee at a public meeting held behind the back of the petitioner. Petitioner communicated his protest against this action of his adversaries to Opposite Party No. 1 and requested for holding a fresh public meeting on 6-7-70. On the direction of Opposite Party No. 1, such a meeting was called on 6-7-70 but due to disturbances caused by the adversaries of the petitioner, the meeting had to be abandoned and no committee could be formed. In spite of it, the adversaries of the petitioner communicated a list of members of the managing committee alleged to have been elected at the public meeting held on 6-7-70 to Opposite Party No., 1 who, by the impugned order, according his approval and directed the petitioner to make over charge to Opposite Party No. 3. This order of Opposite Party No. 1 is challenged mainly on the ground that the public have no right to elect a managing committee and that it was outside the "jurisdiction of Opposite Party No. 1 to dissolve the existing managing committee and give approval to a new managing committee.

3. In the counter-affidavit filed on behalf of Opposite Party Nos. 1 to 7. 10 and 11, the following facts are stated: Though Opposite Party No. 1 on noticing several acts of mis-management and neglect by the existing managing committee could have taken steps to recommend to the Director of Public Instruction to supersede the old managing committee and reconstitute another in its place u/s 11 of the Orissa Education Act, 1969 (hereinafter to be referred to as the Act), he preferred not to resort to this drastic step, and suggested that it would be better if the public themselves would sit at a meeting and reconstitute a healthy managing committee for better management of the School. Accepting this suggestion at a public meeting held on 25-6-70, a new managing committee was formed and a report to that effect was received by Opposite party No. 1 on 27-6-70. However, receiving a letter of protest from the petitioner on 28-6-70, Opposite Party No. 1 directed for holding a fresh public meeting for selection of

the managing committee on 6-7-70. At the said meeting, two of his representatives were present. 8 of the members of the managing committee were elected unanimously and the President signed the resolution. On receipt of this resolution, Opposite Party No. 1 accorded his approval and issued the impugned order. It is stated that the provisions of the Act do not take away the right of the public to re-constitute a managing committee under the provisions contained in Article 306 of the Orissa Education Code read with Section 7 of the Act nor, does it affect the right of Opposite Party No. 1 to re-constitute such a Committee u/s 41 of the Orissa Education Code (hereinafter to be referred to as the Code).

4. Without determining which of the two rival versions put forth is correct, we would for the purpose of this writ application, assume the facts stated in the counter-affidavit of Opposite Parties to be correct and proceed to consider the points that are raised on that assumption.

5. Mr. Rath on behalf of petitioner advanced the following two contentions: (1) In view of the provisions contained in the Act and the Code, Opposite Party No. 1 has no power or authority to dissolve the existing managing committee or reconstitute another in its place and (2) the public, as such, cannot claim to have any power to elect or constitute a managing committee for a private institution.

6. We would take up the second point first; The question is whether the public have any right to elect a managing committee for a private educational institution. It is not disputed that such an institution is in the nature of a trust and the right of management of the trust rests with the founders. Even if it be assumed that members of the public had given donations or contributions at the time of foundation of the trust, as claimed by some of the Opposite Parties, they do not thereby become the founders of the trust. Therefore in the absence of averment or proof that the local public are the founders of the trust, prima facie, they cannot claim any right to elect a managing committee to manage the trust.

7. The next contention is that Article 306 of the Code read with Section 7 of the Act confers a right in the public to elect a managing committee. Section 7 of the Act runs as follows:--

"7 (1) Every private educational institution shall have a managing committee or governing body, as the case may be constituted in accordance with the rules made in that behalf failing which the recognition granted to the institution may be withdrawn by the State Government.

(2) A managing committee or governing body constituted after the commencement of this Act in respect of any aided educational institution shall, before it starts functioning as such, obtain the approval of the prescribed authority in the prescribed manner."

X X XXX

Article 306 of the Code only provides that the rules for the constitution and term!

of office of managing committees contained in Article 286 of the Code should be adopted by the managing committees of aided Schools subject to such modifications as the Director may approve. These provisions do not directly or indirectly confer or create any power in the public, as such, to constitute a managing committee for a private institution. Therefore, the contention of Opposite Parties that the members of the public have a right to constitute a managing committee of a private institution in that locality is absolutely without force.

8. Point No. 1:-- Section 11 (1) with the Explanation, Section 27 (1) and (4) of the Act and Article 41 of the Code are relevant for a consideration of this point For easy reference, the said provisions are extracted hereunder :--

"11. (1) without prejudice to the provisions contained in any other law for the time being in force, whenever it appears to the Director of Public Instruction that the managing committee or, as the case may be, the governing body of any educational institution has neglected or failed to perform any of the duties imposed by or under this Act or the rules made thereunder he may after giving the managing committee or governing body a reasonable opportunity for showing cause against the proposed action and after considering the cause, if any, shown, supersede the managing committee or the governing body.

X X X X X X Explanation:-- The expression "Director, of public Instruction" shall mean the Director of Public Instruction (Higher Education) in the case of colleges and the Director of Public Instruction (Schools) in the case of Schools.

X X X X 27. (1) The State Government may, after previous publication, make rules for carrying out all or any of the purposes of this Act.

X X X X X X (4) Until rules are made under this Section, the rules contained in the Orissa Education Code which were in force immediately prior to the coming into force of this Act shall, in so far as they are not inconsistent with the provisions of this Act or of the Constitution, be deemed to be rules made under this Act.

41. In case of disputes between the managing committee or Advisory committee of School and the local public, or among the members themselves of the managing committee or Advisory Committee, the Inspector of Schools should obtain the opinion of the District Magistrate before giving his decision. The Inspector of Schools may reconstitute the managing or Advisory committee, if after consulting the District Magistrate he considers it necessary to do so."

9. By the impugned order at Annexure 3, approval to the constitution of the new managing committee elected at a meeting of the local public held on 6-7-67 has been given. The Act came into force on 16-10-69. Therefore the validity of the impugned order at Annexure 3 is to be judged in the light of the provisions of the Act. u/s 11 (11) of the Act, the power of supersession of an existing managing committee or governing body vests in the Director of Public Instructions, the

conditions for exercise of this power being firstly, the committee or governing body of the educational institution has neglected or failed to perform, any of the duties imposed by or under the Act or the rules made thereunder and secondly, if it is intended to supersede the existing managing committee a reasonable opportunity is to be given for showing cause against the proposed action.

10. In this case, admittedly, the dissolution of the existing managing committee was not done by the Director of Public Instruction who is the only authority empowered to do it u/s 11 (1) of the Act. Assuming that the School building was left in a bad state of repairs and did not provide accommodation to the students, as reported by Opposite Party No. 1, they only indicate the neglect or failure on the part of the managing committee to perform its duties as required under the provisions of the Act and the Rules. On the finding of such neglect or failure of performance of its duties, it was for the Director of Public Instruction to dissolve the existing managing committee and reconstitute another. It was not within the competence of Opposite Party No. 1 or members of the public to assume powers envisaged in Section 11 (1) of [the Act and effect dissolution of the existing managing committee or reconstitution of another. On this ground alone the impugned order according approval to the new managing committee is liable to be quashed.

11. Section 27 of the Act confers the rule-making power on the State Government- Admittedly, no rules have yet been framed. Under Sub-section (4),, until rules are framed under Sub-section (1), rules contained in the Code which were in force immediately prior to the coming into force of the Act, in so far as they are not inconsistent with the provisions of the Act, shall be deemed to be rules made under the Act. Placing reliance on Article 41 of the Code, it is contended for Opposite Parties that the provisions contained therein is to be deemed to be a rule in force under which Opposite Party No. 1 was competent to reconstitute the committee.

12. It is to be considered firstly,, whether on the facts and circumstances of this case, Article 41 of the Code will be attracted and secondly, even otherwise, whether Article 41 can be considered to be a rule still in force.

13. Article 41 refers to disputes between the managing committee or advisory committee of a School and the local public or among the members themselves of the managing committee or advisory committee. In the present case, the reason for dissolution of the previous managing committee and reconstitution of the new one to which approval was accorded is its neglect to maintain the School building in a proper condition and provide adequate accommodation to the students. This is something different from the grounds contemplated in Article 41. Therefore, prima facie, Article 41 of the Code will have no application. A similar question came up for consideration before this Court in O. J. C. No. 730 of 1970, D/- 19-1-1971 = (reported in AIR 1971 Ori 2731. There, it was held that Section 11 (1) of the Act is very wide in its amplitude and would include in its sweep the essential features prescribed in Article 41 of the Code. Therefore, the cases

conceived in Article 41 would also come within the ambit and purview of Section 11 (1). This being so. Article 41 of the Code cannot be treated as a rule framed under the Act in view of its inconsistency with Section 11 (1). The result is that all actions for supersession of the Committee must therefore be taken u/s 11 (1) and no action can be taken under Article 41 of the Code.

14. On the aforesaid analysis and the reasons discussed above, the impugned order at Annexure 3 approving the new managing committee cannot be sustained and the old committee shall be deemed to be continuing as before.

15. In the result, we allow the Writ application and order that a writ of certiorari be issued quashing the impugned order at Annexure 2 and a writ of mandamus be issued against the Opposite Parties not to interfere with the old managing committee, except in accordance with law. In the circumstances of the case there will be no order as to costs.

G.K. Misra, C.J.

16. I agree.