

**(1994) 01 OHC CK 0027**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 9630 of 1992**

Chakradhar Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

**Date of Decision :** 10-01-1994

**Acts Referred:**

Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 — Rule 28

**Citation :** (1994) 1 OLR 290

**Hon'ble Judges :** S.K. Mohanty, J;D.P. Mohapatra, J

**Bench :** Division Bench

**Advocate :** S.C. Das, B.K. Patnaik and R.C. Mohanty, for the Appellant; A.G.A., G.C. Patnaik, J.K. Sahoo, A. Mohapatra, R.C. Sahoo, G.N. Swain, R.C. Swain and H.N. Mall, for the Respondent

## Judgement

S.K. Mohanty, J.—The controversy raised in this proceeding is .whether an Inspector of Schools having once approved the managing committee of an aided high school under the provisions of Orissa Education (Establishment, Recognition and Management of Private High Schools) Rules, 1991, could modify the same subsequently and substitute a nominated member thereof."

2. Baladi Nuagaon High School is an aided high school. After Coming into force of the aforesaid Rules on 18-12-1991, the question of reconstitution of the managing committee of the said school arose and by order dated 29-8-1992 (Annexure-5) the Inspector of Schools constituted the managing committee with the Tahasildar Khandapara as the President Headmaster of the school in ex otificio capacity as the Secretary, and 9 other members which indicated two" seniormost trained graduate teachers of the school, the District Inspector of Schools (in ex officio capacity), one nominee of the local (MLA another nominee of the Chairman, Notified Area Council and four others nominatad by the President of the said committee. In this approval order the petitioner figured as the nominee of the local MLA. Subsequently by order dated 6-11-1992 (Annexure-1), the Inspector of Schools directed partial modification of his earlier

order and approved another list of 11 members. In the fresh list, the name of the petitioner has been substituted by one Raj Kishore Dalai as the nominee of the local MLA.

3. Dr. S. C. Dash for the petitioner attacked the approval order dated 6-11-1992 as illegal and contended that once a managing committee is approved the members are to function for the full tenure and even otherwise, substitution of any member is not permissible without following the rules of natural justice which in the instant case have been violated.

4. The learned Additional Government Advocate on the other hand, submitted that a nominated member cannot have the right to continue for the full tenure and the authority empowered to nominate is entitled to change the nominee at any time during the tenure. As to the facts of the case it is stated by the Inspector of Schools in her counter that she constituted the managing committee as per order dated 29-8- 1992 on the basis of the proposal received from the Tahasildar and when subsequently the latter submitted another panel of names modifying his earlier proposal for smooth management of the school, the same has been approved by her in Annexure-1 and it is perfectly valid in law. Later the Inspector of Schools has however filed an additional affidavit indicating therein that subsequently the Tahasildar, Khandapara, changed the names of his nominees and the local MLA also changed his nominee and the modified list was sent by the Tahasildar to the Inspector of Schools, Herein a clear stand has been taken that since the nominee enjoys the office till pleasure of the nominator as per Clause (iii) of Section 28 (1) the nominator has authority to change his nominee without assigning any reason and consequently it cannot be said that rule of natural justice have been violated.

5 On a comparison of the two approval orders it is noticed, that earlier the petitioner was included as a nominee of the M.L.A Khandapara and in the subsequent order he has been substituted by one Raj Kishore Dalai. Similarly four members who figured in the earlier list being nominated by the Tahasildar (President of the Managing Committee) have been substituted by four other persons.

6. On a perusal of the concerned file maintained in the office of the Inspector of Schools, Khurda, it is noticed that in fact the M.L.A., Khandapara by his letter dated 2-11-1992 addressed to the Circle Inspector of Schools, Khurda Circle, nominated Raj Kishore Dalai as member of the committee. Further the Tahasildar, Khandapara in his Setter of the even date addressed to the said authority indicated that the M.L.A., Khandapara, desired modification of the approved list in respect of four other members for the smooth and effective management of the high school and therefore, the four other persons indicated in the letter may be taken in and a revised list of members of the committee may be drawn up. Thereafter the Inspector of Schools has passed orders in the file approving the changes.

7. In above facts, the legal question as to the competency of the Inspector of Schools to modify his earlier order may be discussed.

Dr. Dash for the petitioner relied on a Division Bench decision of this Court in *Ananta Kumar alias Charan Jena and Others Vs. State of Orissa and Others*, in support of his argument that rules of natural justice should have been followed and an opportunity of being heard should have been afforded before substitution of the nominated members. But this decision can be of no application for the following reasons, That case was governed by the Orissa education (Management of Private Colleges) Rules, 1979 and Rule 5 (I) thereof clearly provided that whenever it is proposed to substitute any nominated members, the members so proposed to be substituted may be given a reasonable time to represent against the proposed action. No such provision exists in the rules we are concerned with.

8. Dr. Dash next relied upon the decision of the apex Court in *S.N. Mukherjee Vs. Union of India*, in support of his argument that the Inspector of Schools should have assigned reasons for modifying the approved list in compliance of principles of natural justice which govern exercise of power by administrative authorities. But herein it is laid down that the extent of application of rules of natural justice depends upon particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. The Legislature while conferring the power on an administrative authority may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and communicated to the aggrieved party and it may dispense with such a requirement expressly. In absence of any such express provision, inference may be drawn by necessary implication from the nature of the subject-matter, the scheme and the provisions of the enactment. The public interest underlying such a provision outweighs the salutary purpose, namely, chances of arbitrariness and unfairness in the process of decision making which are served by following the rules of natural justice.

9. The learned Additional Government Advocate, on the other hand, relied on the decision of the apex Court in *Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others*, - In that case referring to Section 9 of the U. P. Municipalities Act, it is stated that there is no question of any violation of principles of natural justice in not affording an opportunity to the nominated members of the municipality before their removal not the removal under the pleasure doctrine contained in Section 9 pass any stigma on the performance or character of the nominated members. The proviso to the said Section 9 clearly provided that the member nominated shall hold office during the "pleasure of the State Government.

10. In the case at hand admittedly the Inspector of Schools has not passed a reasoned order nor has either issued notice or heard the members who were nominated earlier. In order to form an opinion as to whether such a procedure should have been adopted by the Inspector, it is necessary to know the relevant provision contained in Rule 28 of the Management Rules, 1991 which is extracted

hereunder :

28, Managing Committee of Aided High School-

(1) Notwithstanding anything contained in these Rules as soon as a High School becomes an aided one the Managing Committee of the school shall be reconstituted in the following manner namely :

(i) xx xx xx

(ii) xx xx xx

(iii) Local M.L.A. of the constituency in which the school is

situated. Chairman, Panchayat Samiti/Municipality/Notified Area in which the school is situated shall nominate a person each to be member of the Managing Committee. Persons so nominated shall enjoy office during the pleasure of the nominator.

(iv) Four persons of the locality interested in the field of education which may include the highest donor if the donation exceeds Rs. 50,000/- (Rupees fifty thousand), one person belonging to S.T./S.C. and one woman, may be nominated by the President of the Managing Committee to be members of the Managing Committee.

XX XX XX"

11. It is thus seen that the M.L. A. and the Chairman of the Panchayat Samiti/ Municipality/Notified Area. Council have been given the power to change their nominees at their pleasure during the tenure of office But no such power has been given to the President (Tahsildar/ Additional Tahasildar) in respect of his nominees. Thus out of the Managing Committee, two nominated members have been placed in disadvantageous position, whereas the four others do not have this disadvantage. It would appear from the above that rules of natural justice in the shape of affording an opportunity of being heard or a reasoned order being passed by the Inspector is not warranted so far as nominees of the M.L. A. and the Chairman are concerned. But so far as the nominees of the Tahasildar are concerned, such procedure has to be followed if they are sought to be replaced during the tenure. The ratio in Om Narayan Agarwal (supra) clearly applies so far as the nominee of the M.L.A. is concerned. In the case at hand, the M.L.A. himself having changed his nominee, substitution of the name Raj Kishore Dalai in place of the petitioner cannot be successfully assailed.

12. As already stated, the Inspector has changed the nominees of the Tahasildar on a move from the letter on the ground that it was the desire of M.L.A. Khandapara to modify the list in respect of the four nominees of the Tahasildar. Thus, the Tahasildar made the move not on his own but at the behest of the M.L.A, This is unfortunate. As a responsible Government Officer, the Tahasildar has been made the ex officio president of the Managing Committee and given the authority to nominate four members of his own.It is not expected of him that he

would act not on his own. Apart from this infirmity, the four members approved earlier have undisputedly not been given any opportunity of being heard, thereby violating the rules of natural justice. Therefore, substitution of the four members nominated by the Tahasildar was contrary to law.

13. On above analysis, the Irresistible conclusion is that the nominees of the M.L.A., the Chairman and the President can be changed during a tenure, for change of the nominees of the M.L.A. and the Chairman, there is no need of complying rules of natural justice, but with regard to the change of the nominees of the President, rules of natural justice must be complied. Applying this position of law to the facts of this case, the change of the four nominees of the Tahasildar as in Annexure-1 is quashed. The four members earlier nominated by the Tahasildar shall be deemed to be continuing as members of the Mana- ging Committee, till replacement, if at all in due process of law. Such an\* order is passed even without any grievance on this score before us- because the illegality is patent from the record. The writ case is accordingly disposed of.

D.P. Mohapatra, J.

I agree.