

(1995) 07 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 264 of 1995

Chandra Nath Phookan

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Assam Aided College Management Rules, 1976 — Rule 2
Assam Education Department Selection Rules, 1981 — Rule 2

Citation : AIR 1995 Guw 115

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : S.N. Medhi, R. Chakraborty, M. Das and A. Choudhary, for the Appellant; D.P. Chaliha, G.A. and B. Devi, for the Respondent

Judgement

D.N. Baruah, J.—In this Civil Rule the petitioner has challenged Annexure-III Notification No. G(B) GB, 2/94/10 dated 12-7-94 issued by the 3rd respondent-Director of Public Instructions, Assam and has prayed for issuance of appropriate writ or direction direction the respondents to cancel/recall the said notification dated 12-7-94 and also for a direction to the respondents not to interfere with the management of the college during its venture stage.

2. The facts of the case may be stated as follows:--

Beltola College was established in the year 1983. The said college has been managed and controlled by the public of the locality. The college was established and being run with the help of contribution received from the people in the locality. A steering committee was constituted by the public of the said locality to manage the affairs of the college. The petitioner was appointed Secretary of the said Steering Committee. Higher Secondary classes of the college started in the year 1983. The college was recognised by the Assam Higher Secondary Education Council in the year 1992 under the provisions of the Revised Regulations. The college also started T.D.C. classes. Some students appeared in the Part-II B.A. examination from the said college.

This college is a venture college and the teachers appointed in the college are given only some remuneration ranging from Rs.400/- to 500/-. The college receives Rs. 2.000/- per month as ad hoc grant from the Government. This college is out and out a venture college and the students are appearing in the B.A. Part-I and Part-II examinations as non-collegiate candidates. Rules and Regulations framed for the Aided College are not applicable to this college.

The Director of Public Instruction --respondent No. 3 constituted a Governing Body of the College by Annexure-I notification dated 22-12-93 in exercise of the powers under Govt. Notification No. ECL. I19/76/Pt/10 dated 18-5-78 appointing Dr. Pratul Goswami as the President, Principal as the Secretary and some others including respondent No. 9 as members. The petitioner, thereafter, instituted a suit in the Court of the Munsiff, Guwahati for a declaration that the said notification dated 22-12-93 (Annexure-I) was illegal, without jurisdiction and also sought for a permanent injunction restraining the defendants of the said suit from taking over the management of the college on the basis of the Annexure-I notification. An application for temporary injunction under Order 39 , Rules 1 and 2 was also filed praying for an injunction restraining the defendants from taking action on the basis of Annexure-I notification. Annexure-II status quo order was passed on 18-1-94 by the Munsiff.

During the pendency of the said suit and injunction matter, the 3rd respondent issued yet another notification (Annexure-III) dated 12-7-94 in purported exercise of power under Government Notification No. ECL.119/76/Pt/10 dated 16-5-1978 reconstituting the Governing Body of the College with respondents Nos. 4 to 9 as members for a period of 3 years with effect from the date of issue of the notification. The previous Governing Body constituted by Annexure-I notification was also constituted by the 3rd respondent for a period of three years. The 3rd respondent issued Annexure-IV notification dated 15-7-94 cancelling the previous Annexure-I notification. After the constitution of the Governing Body by Annexure-III notification the Principal who was appointed Secretary, convened a meeting of the said Governing Body by Annexure-V notice dated 14-7-94 on 7-7-94 and by a copy of the said notice requested the petitioner to attend the meeting and offer his suggestion for taking immediate action for the development of the college and to hand over charge, cash balance along with other relevant records to the Secretary-cum-Principal. Being dissatisfied with the reconstitution of the Governing Body by Annexure-III, public of the locality held a meeting on 18-9-94 and disapproved the reconstituted Governing Body and constituting a Governing Body/Steering Committee from among the members of the public in the locality and sent a copy to the Secretary to the Government of Assam, Education Department for necessary action. In the Governing Body/Steering Committee constituted in the aforesaid meeting held on 18-9-94, the petitioner was selected as Secretary and some leading people of the locality present in the said meeting also sent a letter dated 10-10-94 with a copy of the proceedings and resolution of the meeting to the Commissioner and Secretary to the Government of Assam, Education Department. In spite of this

the authority failed to do anything. Annexure-VII representation was, thereafter, submitted to the Minister Education, Assam expressing the grievance of the public of the locality against the reconstitution of the Governing Body. In spite of repeated request nothing had been done. As a result, nobody was there to look after the welfare of the college. The petitioner's contention is that the college is only a venture college receiving only a paltry sum of Rs. 2,000/- per month. The Government by paying only a sum of Rs.2,000/- cannot interfere with the decision of the Governing Body. Hence the present petition.

3. Heard both sides.

4. "Aided College" has been defined in Rule 2(v) of Assam Education Department Selection Rules, 1981.1 quote Rule 2(v) of the aforesaid Rules:--

"(v) "Aided College" means a College which is in receipt of deficit grant-in-aid from the State Government."

Therefore, in order to bring within the definition of aided college, a college must receive deficit grant-in-aid from the State Government and only those colleges which receive deficit grant-in-aid from the State Government shall be governed by the Assam Aided College Management Rules, 1976 (for short, 1976 Rules).

5. In the case in hand, Beltola College receives only an ad hoc grant of Rs. 2,000/-per month and, therefore, it cannot be said that it receives deficit grant-in-aid from the State Government. In view of the above, I am of opinion that Beltola College is not a Government Aided College to bring it within the ambit of 1976 Rules. Therefore, the Director of Public Instructions, Assam has no jurisdiction in the matter of constitution of the Governing Body. Even assuming that the aforesaid 1976 Rules apply in that case also it is to be seen whether the Director of Public Instructions has power to constitute or reconstitute the Governing Body. By Annexure-III Notification dated 12-7-94 the Director of Public Instructions, Assam reconstituted the Governing Body for a period of 3 (three) years with the members mentioned in the said notification. Rule 2 of the 1976 Rules only empowers the Director of Public Instruction to approve or disapprove the constitution of a Governing Body and Rule 3 of the said Rules envisages that under special circumstances the Secretary to the Government of Assam in the Education Department may sanction a Special Body. On reading of Rule 2 of the 1976 Rules it is abundantly clear that under the aforesaid Rules the Director of Public Instructions has no power to constitute or reconstitute a Governing Body. Under special circumstances a Special Body may be sanctioned, but that power is with the Secretary to the Government of Assam in the Education Department. That being so, I am of opinion that Annexure-III is contrary to the provisions of law.

6. In view of the above, I set aside Annexure-III notification reconstituting the Governing Body.

7. In the facts and circumstances of the case 1 make no order as to costs.