
(2000) 11 GAU CK 0015
In the Gauhati High Court
Case No : Writ Appeal (PIL) No. 34 of 1999

Dipankar Bhattacharjee

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-11-2000

Acts Referred:

Assam Aided Higher Secondary, High and Middle Schools Management Rules, 1976 — Rule 4
Assam Secondary Education (Provincialisation) Act, 1977 — Section 5
Constitution of India, 1950 — Article 12, 166, 29, 29(1), 30

Citation : (2000) 3 GLT 480

Hon'ble Judges : N.C. Jain, Acting C.J.; P.G. Agarwal, J

Bench : Division Bench

Advocate : Mr. B.K. Das and Mr. N.K. Chakraborty, for the Appellant; Mr. P.G. Baruah, Mr. C. Choudhury and Mr. R. Goswami, for the Respondent

Judgement

P.G. Agarwal, J.—This public interest litigation was initially initiated by four petitioner to express serious apprehension of the Bengali community that Bengali Higher Secondary School, an institution built 63 years back, a linguistic minority institution under Article 30 of the Constitution has sought to be destroyed and that the said minority institution is not managed as required under the constitution and the statutory provisions.

2. We have heard Mr. Bijoy Das, learned Senior Advocate for the petitioner and Mr. P.G. Baruah, learned Advocate General for the State of Assam, who has raised a preliminary objection regarding the maintainability of the case. It is stated that during the pendency of this writ petition, three out of four petitioner had withdrawn and only the writ petitioner Dipankar Bhattacharjee is continuing/proceeding with the matter and as such it has lost its public interest character. The matter was brought to the notice of this Court by the four petitioners and once the court was satisfied about the public interest nature of the matter, the subsequent withdrawal of three out of four petitioners no way affect the character or nature of the lis and this court, in our opinion need not or should not

throw out the application on that count. We, therefore, propose to consider the matter on merit.

3. The first and foremost consideration is whether the Bengali Higher Secondary School, hereinafter referred to as "the School", is a minority institution under the provisions of Articles 29 and 30 of the Constitution. The question whether a particular institution is a minority Institution or not was considered by this Court in the case of *Jugalkishore Kedia v. State of Assam* 1987 (2) GLR 1. In that case this Court laid down certain criterion which reads as follows :

"What are the tests of determining a minority ? As we have seen, one of the tests is the language spoken by the community. This test has to be satisfied because the rights conferred by Article 30 are based on the same underlying notices as in Article 29. Under Article 29(1) any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. Under Article 30(1), all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice. The question is whether the linguistic minority has to be determined only on the basis of the language spoken by the minority or in respect of any other language ? If, for example, a group of persons belonging to Muslim minority establishes an English medium school, will it be regarded as minority school ? If a group of people belonging to Bengali minority establishes a Hindi medium school, can it be classified as a minority school ? The answer is obviously in the negative, the reason being that the right is for conservation of their distinct language and culture. The very basis of the minority being a religion or language, the right to establish and administer educational institutional of their choice has necessarily to be understood in that context and not outside. Otherwise it will not result in the protection of any cultural or educational right.

We, therefore, hold that a linguistic minority for the purpose of Article 30(1) is to be determined with reference to the language spoken by the community and not with reference to any other language which the community want its children to study."

4. In the light of the above, let us examine whether this school is a minority Institution or not.

5. The school was established in the year 1936 and the name of the school was Silver Jubilee Anglo-Bengali High School with the aim and object to teach boys through the medium of Bengali language. The documents submitted by the petitioner also shows that prior to the establishment of this school the Cotton Collegiate School at Guwahati had two wings - Assamese Medium and Bengali Medium. But due to increased requirement for both the stream, a separate Bengali Medium School was established under the above name and style and the existing Cotton Collegiate School continued to render education exclusively through Assamese medium. The school was established and the construction of

the building etc. were all done from generous contribution made by the members of the Bengali community and the school was identified to be an institution of linguistics minority. The School was provincialised in the year 1977 under the Assam Secondary Education Provincialisation Act, 1977 but according to the petitioner the nature and character of the School as a minority school was not altered. Learned Advocate General has form a school as a minority school. However, on perusal of the overwhelming materials available on record we have no hesitation whatsoever to hold that the Silver Jubilee Anglo-Bengali High School was established as a minority institution for catering to the needs of the Bengali community mainly for providing education through Bengali medium and the said nature and character has not altered. As held in the case of Jugalkishore Kedia (supra) the provincialisation of the school under the relevant Act does not alter or change the character of the school. It is submitted that in the notification regarding provincialisation of the school, there was no declaration that the school is purely minority school meant for the Bengali community. Admittedly there is no such declaration in the notification of provincialisation, but in the case of N. Ammad Vs. The Manager, Emjay High School and Others, the Apex Court observed that:

"a school which is otherwise a minority school would continue to be so whether the Government declare it as such or not. When the Government declared the school as a minority school, it has recognised a factual position that the school was established and is being administered by a minority community. The declaration is only an open acceptance of legal character which should necessarily have existed independent to such declaration."

6. Hence considering the facts and circumstances of the case which establishes that the school was all along administered and managed as a minority school and notwithstanding the absence of any declaration as such by the State Govt., we hold that the school is a minority institution entitled to protection as provided under Articles 29 and 30 of the Constitution.

7. Vide order dated 31.8.96 the Inspector of School, Kamrup District Circle constituted a Managing Committee of the School with Shri Ashis Ranjan Banerjee as President and the Principal of the School as Principal/Secretary and 9 other members constituting the Managing Committee. Annexure - E is the copy of the said order which shows that the term of the said committee was for a period of 3 years with effect from the date of first sitting of the committee. The said committee was however dissolved by the competent authority on 16th March, 1999 and a new committee was constituted. The petitioner have challenged the dissolution of the earlier committee mainly on the ground that the period of 3 years had not expired and during the life span of the said committee it was dissolved with mala fide intention and even the principles of natural justice were not followed, i.e. even no show cause notice was issued to the committee or to Mr. A.R. Banerjee, the then President of the Managing Committee of the school. In the case of Dr Rash Lal Yadav Vs. State of Bihar and Others, the Apex Court

observed :

The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge in his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural Justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers powers in the State Government to be exercised in certain circumstances or eventualities, it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statutes. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair and reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate as checks on the freedom of administrative action and often prove time - consuming but that is that price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural Justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by Insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision making. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge or arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrations. Courts presume this requirement in all its width as implied unless the enactment supplies indications to the contrary as in the present case. This Court in *A K Kraipak v. Union of India* after referring to the observations in *State of Orissa v. Dr. (Miss) Binapani Dei* observed as under :

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it."

These observations make it clear that if the statute, expressly or by necessary implication omits the application of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness."

8. After referring to its earlier decision, the Apex Court, further, held that unless the law expressly or by necessary implication includes (sic, excludes) the application of the rule of natural justice; Courts will read the said requirement in

an enactment that are silent and insist on its application even in cases of administrative action having civil consequences.

9. Admittedly in the present case, no show cause notice was issued. Learned Advocate General submits that each and every violation of the principles of natural justice is not material and has referred to a decision of this court in the case of the Managing Committee, Pub-Baralimari High School & Apr. v. State of Assam & 11 ors., reported in 1995 (2) GLT 2895. Learned Advocate General has further stated that in the present case, as many as 6 members of the existing Managing Committee had tendered their resignations and, as such, the competent authority had no other alternative but to dissolve the Managing Committee. The letter of resignation by the six members of the Committee is available on record and this has not been disputed. As more than 50% of the members of the committee had tendered their resignation the said committee could not function and, as such dissolution of the committee without issuance of show cause notice etc. or following the principles of natural justice cannot be held to be violative of the principles of natural justice as the above violation was not at all material. We also find that by now the term of the earlier committee has also expired and even if the dissolution is set aside the said committee can not be put back. Hence no interference is called for.

10. The petitioner has also challenged the constitution of the new committee vide Annexure - F dated 16.3.99, whereby a committee with Shri Biraj Kr. Sarma Minister, Municipal Administration, Assam as President was constituted. The reconstitution of the said committee has been challenged on the following grounds : (1) the constitution is in contravention of the provisions of the Assam Aided Higher Secondary School, High and Middle Schools Management Rules, 1976, for short "the Rules"; (2) The appointment of a non-Bengali speaking person, i.e. Biraj Kumar Sarma as President of the School amounts to interference in the management of a minority school and its shows a design of the State authority to change the nature and character of the minority institution. (3) The action of the authority was mala fide.

11. The 1976 Rules were framed under the executive powers of the State. Apparently, these were not framed under the 1977 Act as the Act came into force after the Rules were promulgated. A bare perusal of the Rules shows that these were promulgated by the Govt. of Assam and came into force from the Date notified. The Rules were subsequently amended by the Govt. of Assam vide Notification dated 16th May, 1988. Under Rule 4(b) of the Rules the President shall be nominated by the Government. The Note to the said Rule further provides that the power of nomination under these Rules is delegated to the Inspector of Schools. Shri Das, learned counsel for the petitioner however submits that on 11th June, 1996, Annexure - D circular was issued by the Inspector of Schools, Gauwahati which shows that the President of the Managing Committee is to be selected by the General Meeting. The said Annexure - D was issued with reference to the Govt. letter dated 1.6.1996 issued by the Deputy

Secretary to the Govt. of Assam which is Annexure-A(2) to the affidavit filed by the respondent State wherein it is shown against the name of the President selected by the General Meeting. It is therefore submitted that Rule 4(b) stands modified or amended and the President of the School is required to be selected by the General Meeting and as in the present case the President was nominated by the Inspector of "Schools" the constitution of the said committee is bad. Learned Advocate General -on the other hand submits that the above circulars were issued by the Inspector of Schools and Deputy Secretary to the Govt. of Assam and in view of the provisions of Article 166 read with Rule 12 of the Rules for Executive Business, these documents had no force of law in the sense that there were not issued in the name of the Governor and, as such, by virtue of these two letters it cannot be said that the provisions of the Rules stands amended or modified. A copy of the 1978 amendment of the Rules is available on record which shows that the amendments were made vide Notification dated 16th May, 1978 in the following language.

"The Governor of Assam is pleased to make amendment to the Assam Aided Higher Secondary, High and Middle Schools Management Rules, 1976 hereinafter called "the said rules" in the manner hereinafter appearing namely."

12. On perusal of Annexure - 2 and Annexure - 3, it is seen that these were not issued in the name of the Governor and it is also not mentioned that it has been issued with a view to amend the Rules or that the Rules stand amended by virtue of the Notification.

13. The obvious question is whether a wrong statement or wrong quotation of Rule in a letter issued by the officers of the State Govt. may amount to or can be considered as an amendment of the Rules ? As stated above, the Rule 4(b) is very clear providing "President shall be nominated by the Government". In the Annexure A2 and Annexure-A3 against the name of the President a line is shown "selected by General Meetings". In our opinion, the above sentence in those two letters does not amount to amendment of Management Rules and by no means can be deemed to have amended the provisions of Rule 4(b) of the Rules.

14. Learned counsel for the petitioner however submits that these circulars should govern the field notwithstanding the provisions of the Rules. In support of his submission the learned counsel has referred to the observations of the Apex Court in the case of Paper Products Ltd. v. Commissioner of Central Excise 1977(7) SCC 84, wherein the Apex Court while considering the effect of the circulars issued under the Central Excise Act held :

"From the case law it is clear that apart from the fact that the circulars issued by the Board are binding on the Department, the Department is precluded from challenging the correctness of the said circulars even on the ground of the same being inconsistent with the statutory provision."

15. The observation of the Apex Court in the Paper Products (supra) are no way applicable to the present case. That case relates to the levy of the duty etc. and

under the Excise Rules, the circular issued by the competent authority from time to time govern the field regarding the duly applicable and, as such, the circulars are said to hold the field, unless overruled or modified.

16. Learned counsel for the petitioner has further submitted that the nomination of Mr. Biraj Kumar Sarma, Minister, Municipal Administration, Govt. of Assam amount to interference in the minority institution and is in fact in direct violation of the directions given by this Court in the Jugal Kishore Kedia (supra). It is stated that the earlier Managing Committee was dissolved at the behest of Shri Sarma, respondent No. 4 and the writ petition contains allegation of mala fide against the said respondents and although opportunity was given to the said respondent to controvert the allegations but he has chosen not to file affidavit in opposition and, as such, the allegation may be accepted as correct. Annexure-B is a letter of resignation by 6 members of the existing committee and it is dated 12th November, 1998. It was produced by the respondents and in the body of the said letter there is an endorsement by Respondent No. 4 which reads as follows :

"I. S. of Schools (K) - As the six members of the Managing Committee of the Bengali H.S. have resigned so dissolve the committee immediately and constitute a new committee immediately."

17. It is, therefore, submitted that the dissolution of the earlier committee was at the behest of the Respondent No. 4 of the new committee was also constituted as per his direction. Learned Advocate General, on the other hand, submits that on receipt of the resignation letter, the Additional Director of Secondary Education vide Annexure -D(1) dated 67th March, 1999 directed the Inspector of Schools to reconstitute the committee and accordingly the present committee was constituted. In Abdul Kadir (supra) this Court held that the constitution of the Managing Committee or approval thereof is to be done by the competent authority independently and that power cannot be exercised on the dictates of political leaders. Learned counsel submits that in view of the endorsement quoted above, it is a case of political interference and the respondent No. 4 has got himself nominated as President with an eye on the vote bank of the minority community. Learned Advocate for the respondents, on the other hand, submits that the above submission is baseless and the nomination of the respondent No. 4 who also happens to be local M.L.A. of the area, besides being a Minister, cannot be said to be a political appointment as because generally, the local M.L.As are made President of the Educational Institutions. Further, we find that although endorsement was made in the month of November, 1998, the Inspector of Schools did not dissolve the earlier committee or constitute the new committee on the strength of the said endorsement but as transpires from Annexure-F the new committee was constituted in pursuance of direction dated 6.3.1999 issued by the Director. Hence we hardly find any substance in the submission that the constitution of the new committee was at the dictates of the respondent No. 4.

18. Now coming to the question of nomination of a person not belonging to the particular community or class as President of a minority institution, in the case of Jugalkishore Kedia (supra) this court did consider the various decisions of the Apex Court, namely. All saints High School v. Andhra Pradesh 1980 SC 1042; Frank Anthony Public School Employees Association v. Union of India, AIR 1987 SC 322 , Bharat Sevashram Sangh and Others Vs. State of Gujarat and Others, and Mrs. Y. Theclamma v. Union of India 1987 2 SVLR (L) 16, this Court observed :

The composition of the managing committee has to be scrutinised in the light of the above principles. It has not been shown to us that in this Managing Committee the minority shall have no say at all. The President of the committee is to be nominated by the Government. If the Government nominates the President from among the minority community there can be no apprehension in this regard. We also find that there is provision for a special committee under special circumstances. If the fact of the school being in the nature of the minority school is considered as a special circumstances, the Director of Public Instruction may constitute a special committee. There is also provision for nomination by Government of three members to the Managing Committee. This provision may also come in handy in maintaining the administrative rights of a minority school. Considering the above facts we hold that the Rule 4 of the Rules is not ultra vires the Article 30(1) of the Constitution. We are also of the view that where minority characteristics are present the Government should form a special committee in the interest of the minority for managing the minority schools."

19. On going through the decision in Jugalkishore Kedia (supra) we find that this Court never provided that invariably the President of a Minority Institution should be a person of the said minority community. The court only observed that if a person belonging to the minority is nominated as the President of such a School it will display apprehension in the minds of the members of the community.

20. At this stage we have come across a decision of a learned Single Judge of this court in W.P.(C) No. 72(SH)/1999 (Arya Samaj v. State of Meghalaya delivered on 24.11.2000 in which the learned Single Judge has relied on the observation of the Apex Court in Civil Appeal Nos. 1710 of 1721 of 1987 and 1074 of 1987 (Shri Ambika Prasad Kedia & Ors. v. State of Assam & Ors. This shows that the decision of this court in Jugalkishore Kedia (supra) was appealed against and Apex Court had occasion to consider the vires of section 5 of the Assam Secondary Education (Provincialisation) Act, 1977 and Rule 4 of the 1976 Management Rules. The Apex Court held :

"There is a catena of decisions of this Court that lay down the administration of minority educational institutions cannot be taken over and must remain with the minority concerned. These decisions have been adverted to in the judgment under appeal and it is unnecessary to repeat them. Having regard to those judgments, there is no doubt that the said Section 5, the said Rule 4 and the Orders taking over management board thereon are ultra vires of Article 30(1).

They cannot be saved by the method contemplated by the High Court, namely, that a special committee should be constituted in the case. So long as the power to appoint members of the Managing Committee and a Special Committee vests in the Government there is an usurpation of the right of the minority communities to administer their educational institutions.

Learned counsel for the respondents then submitted that the minority educational institutions in question accepted aid and must, therefore, accept such terms and conditions as the Government might impose. The submission is contrary to the terms of sub-article (2) of Article 30. The State shall not, in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. Article 30 must be read as a whole and the fact that a minority educational institution accepts aid does not imply that the minority community concerned has forfeited the right to administer it."

21. It seems that the two letters from the Deputy Secretary, Government of Assam and Inspector of Schools, Assam, may be, were in tune with the above observations of the Apex Court. The nomination of persons to the post of President/Members of Governing Body of minority institution can not be allowed to be made by the State Government and the persons are required to be selected by the concerned community only to administer their educational institution. The fact that the said institution is a provincialised institution does not make any difference. The above protection is available under Articles 29 and 30 of the Constitution.

22. In the result, we hold that the constitution of the managing committee vide Annexure - F dated 16.3.1999 is bad in law as it amounts to interference in the administration of minority institution. The constitution of the committee vide Annexure-F is therefore set aside and the Inspector of Schools, KDC, Guwahati, is directed to convene a meeting of the concerned persons for constitution of a fresh managing committee for Bengali Higher Secondary School, Guwahati. The said process should be completed within a period of 60 days from today and till then the Inspector of Schools, KDC, Guwahati, shall look after the matter through the Principal of the School.

23. With the above observations and direction the writ petition stands disposed of. There is no order as to costs.