

(1990) 02 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 3009 of 1989

Dolagobind Khandai and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-02-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Education (Management of Private Schools) Rules, 1980 — Rule 6, 6(3), 7
Orissa Education Act, 1969 — Section 27

Citation : AIR 1991 Ori 183

Hon'ble Judges : D.P. Mohapatra, J;A. Pasayat, J

Bench : Division Bench

Advocate : M.M. Senapati and J.K. Rath, for the Appellant; A.G.A., S. Misra and S.K. Nayak and K.K. Swain and S. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Pasayat, J.—Anxiety to "manage" the affairs of schools has become the epicentre of a large number of litigations. Schools which are supposed to be temples of education are frequently turning into battle fields of personal egos, political rivalries, group bickerings and factional cavilling. The society is now experiencing, in addition to labour unrest, students unrest, industrial unrest etc., a new type of unrest; "management" unrest. This is now fast intruding in educational institutions. More often than not, the sanctity of the institutions is getting lost, and the purposes for which the educational institutions are set up are frustrated. The present writ application is one of such numerous instances where accusations and counter accusations; allegations of contravention of provisions of law, foul-play and partisan approach by the authorities at the helm of affairs have been made. While the society expects the schools and other educational institutions to be run and managed by people really interested in the welfare of the students, frequently it is seen that something murky is lurking in the background.

2. Petitioners, four in number, have filed this writ application under Articles 226 and 227 of the Constitution of India, praying for issue of a writ in the nature of mandamus or any other appropriate writ, direction or order quashing the order of reconstitution as passed by the Inspector of Schools (opposite party No. 3) relating to the managing committee of Radhashyam Bldyapitha, a recognised unaided school. Controlled and governed by the provisions of the Orissa Education Act, 1969 (hereinafter referred to as "the Act") and the Orissa Education Management of Private Schools Rules, 1980 (hereinafter referred to as "the Rules"), and for a direction that the petitioners continue to be the members of a validly constituted managing committee and that their replacement by opposite parties Nos. 4 to 10 is illegal and arbitrary.

3. The averments made by the respective parties are full of disputes and denials. The undisputed position is that the school in question is a High School which was established in the year 1981, and recognition was granted on 16-8-1983 to the school. A managing committee was formed and approved on 5-10-1983, and its term was to expire on 5-10-1986. As required under Rule 4(1), a panel of names for the succeeding managing committee was submitted on the basis of resolution dated 20-6-1986, which was approved by the Inspector of Schools (opposite party No. 3) on 10-11-1986. After such approval, on the basis of a resolution dated 29-11-1986, opp. party No. 7 was elected as the President while the petitioner No. 3 was elected as the Secretary. The term of office of a managing committee was statutorily fixed at three years at the relevant time, but subsequently in view of the amendment brought in by the Rules called the Orissa Education Management of Private Schools (Amendment) Rules, 1989, the term is presently five years. The amendment is effective from 15th of July, 1989 (the date on which it was published in the Orissa Gazette). It appears the Inspector nominated seven persons for approval of the Director by letter dated 2-3-1988, which is annexed as Annexure 6 to the writ application. The Director approved the names submitted by the Inspector by order dated 8-6-1988 which is annexed as Annexure-7 to the writ application. On the basis of the order of the Director, the managing committee was re-constituted with seven nominated members in addition to the Headmaster and the teachers' representative. The concerned order of the Inspector of Schools is annexed as Annexure-4 to the writ application. This order of the Inspector is the subject-matter of challenge. According to the petitioners, they came to know for the first time from the averments in a writ application, i.e., OJC No. 112 of 1989 about the existence of such an order. In the said writ application the present opposite parties Nos. 4 to 10 had challenged a decision of the Minister, Education whereby he had held that an appeal under Rule 3(1) was not maintainable, and there was a declaration that the order of reconstitution made by the Inspector of Schools was illegal. The said order of the Minister was quashed by this Court. The petitioners contend that the averments made in OJC No. 112 of 1989 were to the effect that the present petitioners and two others had voluntarily tendered resignation from the managing committee which necessitated formation of a new committee. They

assert that there was no voluntary resignation and even if there was resignation, it was withdrawn prior to its acceptance, and in any event the formalities required to be observed before a resignation takes effect in terms of Rule 6(3) being absent, there was no resignation in the eye of law and as a corollary and consequence, the nomination of opp. parties Nos. 4 to 10 is bound to fail and the petitioners are entitled to a declaration that they are deemed to be in office and shall continue to do so till the expiry of the full term of five years. The functionaries under the Act and the Rules, and the opp. parties Nos. 4 to 10 on the other hand contended that the so-called withdrawal of the letters of resignation is a myth and there was no question of acceptance of resignation. According to them, no entity was authorised to and competent to accept the resignation and a meeting could not have been held to accept the resignation, as there would not have been any quorum to constitute a valid meeting. It is also pleaded that the petitioners having gone out of their own volition cannot take shelter behind the pleas of technicalities, and in any event taking an over all view of the entire matter on interference is called for.

4. In this highly controversial and contentious factual backdrop, we feel that exercise of our extraordinary jurisdiction is uncalled for. The extraordinary powers are not to be exercised to set right mere errors of law which do not occasion any substantial injustice. No interference is called for unless there is grave miscarriage of justice or flagrant violation of law. However, we would like to note some of the significant features which have reinforced our reluctance to interfere in the matter. Some of the relevant provisions of the Rules on which reliance has been placed may be referred to. Strong reliance has been placed on Rule 6(3) by the petitioners, which reads as follows:

"6. Term of office of the Members of the Managing Committee -

(1) to (2).....

(3) Any member of the Managing Committee other than the ex officio members may at any time resign from the office by sending a letter of resignation to the President, but such resignation shall take effect from the date on which it is accepted by the Managing Committee."

According to them, even when resignations have been offered, they are not effective until acceptance thereof in a meeting called for the purpose. By a literal interpretation of the rule the contention is attractive, but there may be instances where the holding of the meeting itself may be an impossibility. Rule 7(3) prescribes the quorum to be four at the minimum. The rule is quoted below.

"7. Meetings of the Managing Committee-

(1) to (2).....

(3) The quorum for the meeting of the Managing Committee shall be four. Mere existence of and casual vacancy in membership shall not invalidate the proceedings of the Managing Committee."

In the instant case, out of nine members, six including the President and the Secretary had tendered their resignations. The remaining number is three including two official members. The insistence on a meeting to accept resignation where the persons resigning may not attend would be counter productive. Procedure is handmaid of justice. It is intended to further the cause of justice and not to create stumbling blocks. We may illustrate an extreme case where all the nine members of a managing committee tendered their resignations, then the question would be who would accept them and where. We may take another case where even after getting the letters of resignation the authorised persons with oblique motives do not convene a meeting. It would be against the spirit of legislative intent, to conclude that the resignation was not effective. Judged in this background, we find that there is no irregularity which emerges on account of non-convening of a meeting for the purpose.

5. The other point highlighted was the so called withdrawal before its acceptance. While the petitioners averred that by letter dated 27-10-1987 they had expressed their desire to resile from the resignations tendered earlier, the opposite parties denied existence of such letter. The petitioners on affidavit have averred that the letter was addressed to the Inspector of Schools (opp. party No. 3) and was received in the latter's office on 28-10-1987 prior to receipt of the letters of resignation by him on 4-11-1987. The Inspector of Schools has denied receipt of such a letter. In the affidavit of the petitioners it is averred that there was actual receipt of this letter, as evidenced by entry No. 11234 in the Dak Register of the Inspectorate. On behalf of the Inspector, it was submitted that though the entry in the Dak Register shows receipt of a letter, which was not readily available, relating to the school in question, a bare perusal of the description in the Dak Register would go to show that the same did not relate to any withdrawal of resignation as alleged, but was sent by a guardian. At our direction, the Dak Registrar in question was placed for our perusal and we find it to be so. There are also other materials which hit at the root of plea of withdrawal. The petitioners alleged that the decision relating to constitution of managing committee was taken in a public meeting as stated by the opposite parties and even if such a decision was taken, no legal sanctity can be attached on it. In our view the contention instead of advancing the case of the petitioners really is a factor against them. In the proceeding of the meeting held on 9-11-1987, a copy of which is annexed as Annexure-A/4 and the authenticity of which has not been questioned, it has been clearly mentioned that six members of the managing committee including the petitioners had tendered resignation and the constitution of the new managing committee was the subject-matter of discussion. In the meeting itself the petitioners Nos. 2 and 3 were present along with opp. party No. 7, the ex President and one Bishnu Charan Swain, an ex Member. If in reality they had withdrawn the resignation by letter dated 27-10-1987 as alleged, the question of some of them being signatories to a resolution in the matter of their resignation would not have arisen. Further, the Inspector of Schools after receipt of letters of resignation convened a meeting to

defuse the highly explosive situation that was prevailing on account of clashes of interests between two warring blocks of villagers relating to the management of the school. Undisputedly the petitioners 2, 3 and 4 had attended the meeting convened by the Inspector on 7-12-1987. It has been asserted by the Inspector that even on 7-12-1987 there was no allusion to the so-called withdrawal and any such withdrawal of resignation did not figure in the discussion. We therefore hardly find any reason to accept the submission of the petitioners relating to the so called withdrawal of resignation. In any event the scales of the law is tilted against the petitioners. In that view of the matter, we dismiss the writ application with costs. The hearing fee is assessed at Rs. 500/- (Rupees five hundred).

D.P. Mohapatra, J.

6. I agree.