
(2004) 11 PAT CK 0061
In the Patna High Court
Case No : C.W.J.C. No. 361 of 2004

Dr. Sukrit Saha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-11-2004

Acts Referred:

Constitution of India, 1950 — Article 29, 30

Citation : (2004) 4 PLJR 829

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Ram Balak Mahto, Ganesh Prasad Singh, Chitranjan Sinha, Jayanand Singh and Jayanand Roy, Shyama Prasad Mukherji and Anjan Chakraborty, for the Appellant; Ashok Kumar Choudhary, Satyavrat Verma for the Respondent Nos. 1 to 6, M/s Ray Shivaji Nath, J.S. Arora, Amarendra Narain and Ray Saurabh Nath, for the Respondent

Judgement

Chandramauli Kr. Prasad, J.—Prayer of the petitioner in this writ application is to quash the order dated 12.12.2003 passed by the Director (Secondary Education)-cum-Special Secretary whereby it has observed that the petitioner's appointment as Principal of Ram Mohan Roy Seminary, Khazanchi Road, Patna is not fit to be legally approved. In the said order it has been further observed that the Principal appointed by the Governing Body of Sadhanashram Seva Samsad, Kolkatta or the Managing Committee appointed by it shall only be recognised. Further prayer made by the petitioner is to quash the order dated 27.12.2003 (Annexure-15) in which it has been observed that the decision taken by Md. Zahid, who has been appointed by the Managing Committee, Sadhanashram Seva Samsad, Kolkatta shall only be recognised. Ram Mahan Roy Seminary, an educational institution established by a religious minority, is administered by Sadhnashram Seva Samsad, Kolkatta, hereinafter referred to as the Samsad, a society registered under the Societies Registration Act. The Governing Body of the Samsad constitutes Managing Committee for Ram Mohan Roy Seminary (hereinafter referred to as the Seminary) for its management and administration.

The Samsad resolved to appoint the petitioner as the Principal of the Seminary and in the light thereof Secretary of the Managing Committee of the Seminary issued order dated 31.7.1997 (Annexure-3) appointing the petitioner as the Principal of the Seminary. School Service Commission gave concurrence to his appointment by letter dated 20.8.1998 (Annexure-4) and in the light thereof the District Education Officer by order dated 14.9.1998 fixed the pay of the petitioner.

2. Two sets of people claim to constitute the Governing Body, its Chairman and Secretary of the Samsad, the Chairman of one of the Governing Body of the Samsao is Dr. Laxmi Narayan Roy and the Secretary Premomay Das, hereinafter referred to as the Kolkatta Samsad. Another set of people claiming to constitute the Governing Body of the Samsad, hereinafter referred to as the Bankipur Samsad, found that administration of Seminary from Kolkatta is not possible and accordingly resolved that the Seminary should get itself affiliated to any local body. It is relevant here to state that Kolkatta Samsao had earlier constituted the Managing Committee for looking after the affairs of the Seminary of which Dr. Sumanto Niyogi was made the Secretary. On the advice of Bankipur Samsad the petitioner and Dr. Niyogi got the Seminary affiliated to Bihar Bengali Association. Kolkatta Samsad resolved to dissolve the Managing Committee of the Seminary and appointed another committee of which Mr.RK.Tirpathy was made the Secretary. The Kolkatta Samsao also resolved to suspend the petitioner as Principal of the Seminary and authorised respondent No. 7 Md. Zahid to perform the function of the Principal of the Seminary. A motion of no confidence is alleged to have been passed against the Kolkatta Samsad.

3. it is common ground that the Seminary is a minority school and has been recognised as such by the State Government u/s 18(2) of the Bihar Non-Government Secondary School (Management and Control) Act, 1981. It is further not in dispute that for payment of salary and other emoluments of the teaching and non-teaching employees of the Seminary, the State Government makes available the fund and the said fund is made available on the basis of the details furnished by the Principal or the Secretary of the Seminary.

4. Dispute in regard to the Governing Body of the Samsad, the Managing Committee of the Seminary etc. led to filing of several suits before the Civil Court, Patna and Civil Court, Kolkatta. Title Suit No. 78 of 2000 has been filed by the Bankipur Samsad asserting its right to manage the affairs of Seminary whereas Title Suit No. 2016 of 2001 has been filed by the Kolkatta Samsad before the City Civil Court, Kolkatta alleging that it has the right to manage the affairs of the Seminary in which the City Civil Court had granted the order of status quo. Dr. Sumanto Niyogi had filed Title Suit No. 139 of 2002 for declaration that he is the Secretary of the Managing Committee of the Seminary. Bengali Association had also filed Title Suit No. 330 of 2002 before the Subordinate Judge, Patna claiming the right to manage the affairs of the Seminary. All the aforesaid suits are pending for final adjudication.

5. Aforesaid dispute came to the notice of the State Government which

constituted a three members Committee to enquire as to whether the Managing Committee of the Seminary has been duly constituted by the Governing Body of the Samsad. The Committee in its unanimous report observed that the Managing Committee of which Dr. Niyogi claims to be the Secretary has not been properly constituted. Dr. Niyogi aggrieved by its finding gave representation assailing the Committee's report. The Director on consideration of the report of the Committee, in his impugned order dated 12.12.2003 (Annexure-14) came to the conclusion that Kolkatta Samsad is the ultimate Governing Body to manage the affairs of the Seminary and the petitioner having not been appointed by it, he cannot be said to be the legitimate holder of the post. It further observed that the Principal appointed by the Kolkatta Samsad shall only be recognised. In the light of the order of the Director aforesaid the District Education Officer by the impugned order dated 27.12.2003 directed that respondent No. 7 Md. Zahid having been appointed as Incharge Principal by the competent body, the work done by him shall only be recognised.

6. Petitioner had filed this writ application without impleading the Samsad either represented by Kolkatta Samsad or Bankipur Samsad, Bengali Association and the two persons who claim to be the Secretary of the Managing Committee of the Seminary. However, applications for intervention have been filed by Kolkatta Samsad, Bankipur Samsad and member of the Managing Committee of the Seminary of which Dr. Niyogi is the Secretary. Petitioner, Bankipur Samsad and member of the Committee of the Seminary of which Dr. Niyogi is the Secretary represent one view point who are represented by Mr. Shyama Prasad Mukherjee, Mr. Chitranjan Sinha and Mr. Ram Balak Mahto, Senior Advocates. Another shade of the case has been projected by respondent No. 7 Md. Zahid, Kolkatta Samsad and State of Bihar who are represented by Mr. Roy Shivajee Nath, Mr. Ganesh Prasad Singh, Senior Advocates and Mr. Ashok Kumar Choudhary, G.P. VIII. With the consent of the parties I have heard all of them.

7. Learned counsel representing the two rival shades made great endeavour to establish that body represented by them are legitimate and legal body and are entitled to manage the affairs of the Seminary. In my opinion, writ application is not an appropriate remedy for adjudication of such issues and further the rival contenders having resorted to the remedy of suit in which said issue shall be decided, I deem it inexpedient either to incorporate or answer those submissions. Instead I shall confine this writ application to judge the validity or otherwise of the orders in the present application and any observation made by me in this case is for the purpose of its disposal which shall have no bearing on any other pending proceeding.

8. Mr. Mukherjee appearing on behalf of the petitioner contends that in absence of any statutory power to determine the question as to who has been appointed by the competent body, the orders impugned is illegal and completely without jurisdiction. Mr. Choudhary, however, submits that Section 18(3) (1) of the Bihar Non-Government Secondary School (Management and Taking-over) Control Act,

1981 (hereinafter referred to as the Act, confers wide powers on the Director to adjudicate this question and orders passed by the Director cannot be said to be illegal on the ground urged by the petitioner. He also points out that order passed by the District Education Officer is the fall out of the order of the Director and later being within jurisdiction the former cannot be held to be legal on any count.

9. Section 18 (3) reads as follows:-

From a plain reading of the aforesaid provision it is evident that the State Government possessed all the power to give direction for smooth running of the minority school and for improving the standard of education which shall not be in derogation of the right conferred under Articles 29 and 30 of the Constitution of India. The orders impugned in no way can be said to have been passed under the aforesaid provision. The orders impugned do not contain any direction relating to smooth functioning of the minority institution or improving the standard of education. Hence the orders impugned cannot be said to have been passed u/s 18(3) of the Act but that does not solve the problem. It is well settled that the State Government does not possess only statutory power but also possesses executive power which extends to the matters with respect to which the Legislature of the State has power to make laws. Undisputedly the State Legislature had the power to make laws in respect of minority institution and as such executive power can be exercised in respect thereof.

10. Here I must answer an ancillary submission of Mr. Mukherjee. He submits that impugned order dated 27.12.2003 has been passed by the District Education Officer, who does not possess the power of the State Government. This submission has been made on an assumption that Section 18(3) of the Act confers power on the State Government to issue direction. I have held earlier that the orders impugned have not been passed under the aforesaid provision and, therefore, the question as to whether the D.E.O., can exercise the power of the State Government has no bearing on the decision of the present application.

11. Mr. Mahto and Mr. Sinha contend that the impugned orders of the Director and the District Education Officer in not recognising the petitioner as Principal of the Seminary infringes the right of the minority to establish and administer educational institution of its choice and thus same is ultra vires Article 30 of the Constitution of India. In support of the submission reliance has been placed on 11 Judges Constitution Bench Judgment of the Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . The contesting respondents and the intervenors represented by Mr. Choudhary, Mr. Nath and Mr. Singh do not join issue on the proposition advanced that any interference in the right of the minority to establish and administer educational institution of its choice shall be illegal being violative of Article 30 of the Constitution of India but they contend that the very assumption of the petitioner and intervenor supporting him that the orders impugned interfere with the right of the minority is absolutely misconceived. To put the record straight, Mr.

Choudhary has highlighted that Seminary is an aided institution and its teaching and non-teaching employees are paid salary from the fund made available by the State Government and an institution to which aid is given stands on a different pedestal than a minority institution not getting any aid.

12. In view of the rival stand the question which falls for determination is as to whether impugned orders infringe the right of the minority.

13. Having given my most anxious consideration, I am of the view that the orders impugned do not in any interfere with the right of the minority. It is common ground that payment of salary and other allowances of the teaching and non-teaching employees of the Seminary are paid from the fund made available by the State Government in which the D.E.O. has a prominent role. The dispute between the various bodies to administer the affairs of the Seminary came to the knowledge of the State Government and in order to find out as to who shall be the appropriate person for making available the fund, a three member committee was constituted which heard the parties representing different sets and ultimately gave its finding. The Director in the light of aforesaid came to the conclusion that it is the Kolkatta Samsad which is the superior Governing Body to manage the affairs of the Seminary and the petitioner having not been found to have been appointed by the said Samsad declined to recognise the petitioner as the Principal of the Seminary and in fact recognised respondent No. 7 for carrying out the function of the Principal of the Seminary in the light of the resolution of the Kolkatta Samsad.

14. Thus I find that the decision taken by the Director and the District Education Officer is in exercise of the executive power of the State and I do not find any error in the same so as to call for interference by this Court in exercise of its writ jurisdiction.

15. Mr. Mukherjee contends that the Director while passing the impugned order had observed that the petitioner has neither been appointed Principal by the competent body i.e. Governing Body of Sadhanasram Sava Samsad, Kolkatta nor authorised by it and as such he cannot be recognised as the Principal of the Seminary. He points out that in fact petitioner was so appointed by the Governing Body of the Sadhanasram Seva Samsad, Kolkatta and as such order has been passed on a totally erroneous assumption and on this ground alone same deserves to be quashed. Mr. Mukherjee highlights that public order publicly made has to be tested on the basis of the reasoning assigned therein. In support of the submission reliance has been placed on a decision of the Supreme Court in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and my attention has been drawn to the following passage from the said judgment:-

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are

intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

16. Yet another decision on which reliance has been placed is the decision of the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and my attention has been drawn to the following passage from paragraph 8 of the judgment, which reads as follows:-

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out..."

17. Contesting respondents, however, contend that at one point of time the Kolkatta Samsad resolved to appoint the petitioner" as the Principal of the Seminary and in pursuance thereof he was appointed as such by the Managing Committee of the Seminary and further concurrence to his appointment was given by the School Service Commission but later on petitioner was suspended and respondent No. 7 authorised to carry out the function of the Principal and taking into account the said fact the Director and the District Education Officer by the impugned orders declined to recognise the petitioner as Principal of the Seminary and recognised respondent No. 7 as incharge Principal. It is also highlighted that the orders impugned are not statutory orders and as such the decisions relied on by the petitioner have no bearing at all for the decision of the present case.

18. Having considered the rival submission, I do not find any substance in the submission of Mr. Mukherjee. True it is that the petitioner was appointed by the Kolkatta Samsad but later on that Samsad itself had suspended the petitioner and respondent No. 7 being the senior most teacher had been asked to perform the function of the Principal. At the time when claim of the petitioner as the Principal was being examined, he was put under suspension and was not holding the office of the Principal of the Seminary by virtue of resolution of the Kolkatta Samsad. Petitioner has concealed all these facts in the writ application. He has nowhere whispered that later on Kolkatta Samsad had put him under suspension and respondent No. 7 appointed to carry out the work of the Principal of the Seminary. The contesting respondents have brought this fact in the counter affidavit which has not been denied by the petitioner and as such it cannot be said that the Director while refusing to recognise the petitioner as Principal of the Seminary committed any error by saying that he has not been appointed by the competent body.

19. Now reverting to the authorities of the Supreme Court, I am of the opinion

that the same are clearly distinguishable. The orders in the case of Gordhandas Bhanji (supra) and Mohinder Singh Gill {supra) were passed by the statutory authority and in that context it was observed that their validity have to be judged by the reasons mentioned in the orders and cannot be supplemented by fresh reasons. Here in the present case the orders impugned have not been passed in exercise of any statutory power but have been passed in exercise of the executive power and as such the facts that petitioner was suspended and respondent No. 7 authorised to perform the function of the Seminary is fit to be taken into account for adjudication of the present dispute.

20. Mr. Mukherji then submits that the action of the Director and District Education Officer while passing the impugned order is in breach of the doctrine of legitimate expectation. He points out that the petitioner having once been appointed as the Principal of the Seminary it had legitimate expectation that the same shall be recognised by the Director and the D.E.O. I do not find any substance in this submission of Mr. Mukherjee and the doctrine of legitimate expectation is in no way attracted in the facts of the present case. True it is that the petitioner was once appointed as the Principal of the Seminary but he was suspended from service and in my opinion a person who has been suspended cannot have the legitimate expectation that his service as such shall be approved by the competent authority.

21. Mr. Mukherjee lastly submits that before passing the impugned orders petitioner was not given any notice or opportunity of hearing and this itself vitiates the impugned orders being in breach of the principle of natural justice. I do not find any substance in the submission of Mr. Mukherjee. Principle of natural justice is not an unruly horse and its application depends upon the facts and circumstances of each case. Here in the present case the primary question before the Director was in regard to the body which is competent to administer the Seminary and for that purpose a three member committee was constituted which heard the view point of different claimants and on consideration thereof submitted its report. The question was in regard to the body competent to make appointment of the Principal of the Seminary and on consideration of the rival claims it was found that Kolkatta Samsad is the ultimate body to which the powers to manage the affairs of the Seminary vests. Petitioner's appointment has not been approved not on account of any misdemeanour or inefficiency on his part but on the ground that he was not appointed by the competent body and hence in the facts of the present case I am of the opinion that the principle of natural justice is not remotely attracted.

22. While assailing the order of District Education Officer recognising respondent No. 7 Md. Zahid as Incharge Principal of the Seminary, Mr. Mukherjee submits that Constitution and Rules and Regulation of the Seminary does not permit the appointment of a person as Principal who is not a member of the Sadharan Brhamo Samaj and respondent No. 7 being not a member of the said Samaj, he cannot be authorised to work as the Principal of the Seminary. Mr. Ray Shivaji

Nath, Senior Advocate, however, appearing on his behalf contends that respondent No. 7 has been appointed as a regular Principal of the Seminary and has been authorised to perform the function as the Principal of the Seminary as stop gap arrangement and hence the requirement that the Principal has to be member of the Sadhanasram Brahmo Samaj shall not stand in his way.

23. Having considered the rival submission I find substance in the submission of Mr. Mukherjee. Clause 7 of the Constitution of Rammohan Roy Seminary reads as follows:-

"7. The appointment of the Principal who must be a member of the Sadharan Brahmo Samaj, Kolkatta, shall be made by the Governing Body of Sadhanasram Seva Samsad and will be subject to day-to-day supervision and control by the Managing Committee. The Principal shall be under the overall control and direction of the Governing body of the Samsad."

24. From a plain reading of the aforesaid provision it is evident that the Principal has necessarily to be a member of the Sadharan Brahmo Samaj. In my opinion, a person who cannot be the Principal of the Seminary in terms of the Constitution, cannot be appointed as such by way of stop gap arrangement. In other words person not eligible to be appointed on a particular office on regular basis cannot be appointed to that office as stop gap arrangement. Here respondent No. 7 being not eligible for appointment as Principal of the Seminary, in the face of its Constitution, he cannot be allowed to perform the function of the Principal by way of stop gap arrangement. To that extent the order of the District Education Officer dated 27.12.2003 (Annexure-15) cannot be allowed to stand. in the result, writ application is partly allowed. Order dated 27.12.2003 (Annexure-15) to the extent that it has endorsed the functioning of respondent No. 7 as the Principal of the Seminary is quashed. In the facts and circumstances of the case, there shall be no order as to cost.