

(1995) 02 OHC CK 0021
In the Orissa High Court
Case No : O.J.C. No. 7582 of 1992

Durjyodhan Mallik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-02-1995

Acts Referred:

Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 — Rule 27(9), 28
Orissa Education Act, 1969 — Section 7(5)

Citation : (1995) 1 OLR 589

Hon'ble Judges : P. Ray, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : Subrata Kumar Mohanty and Siva Mohanty, for the Appellant;
Additional Government Advocate, for the Respondent

Judgement

1. Heard learned counsel for both sides.

The order of the inspector of Schools, Cuttack-III Circle dated 15-7-1992 annexed to the writ application as Annexure-7 refusing approval of the Managing Committee of a private High School under the provisions of the Orissa Education (Establishment, Recognition and Management of Private High Schools) Rules, 1991 hereinafter referred to as "the Rules") is being challenged in this writ application, inter alia, on the ground that no communication having been received from the Inspector of Schools within a period of 30 days in accordance with the first proviso to Sub-rule (4) of Rule 28 of the Rules, the constitution of the new Managing Committee for which proposal had been sent by the Secretary of the School must be deemed to have been approved. Admittedly the School is an aided High School. Therefore, the Managing Committee has to be reconstituted in accordance with Rule 28. According to Rule 28 (1) (iii) the Managing Committee must consist of a nominee of the local MLA, in which the School is situated Chairman, Panchayat Samiti/Municipality/Notified Area in which the School is situated. The proposal which had been sent to the Inspector of Schools for approval did not contain the nominee of the local MLA. The

Inspector of Schools, therefore, refused to approve the same as the Body was an incomplete one and had not been constituted in accordance with Rule 28 of the Rules. The petitioner's contention is that even though the Inspector of Schools was given the " proposal after the concerned authorities failed in their attempt to obtain the nominee of the local MAL and the Inspector of Schools having not communicated the decision within 30 days, the Managing Committee, as suggested, must be deemed to have been approved. We are unable to accept this contention as, in our opinion, the proviso to Sub-rule (4) of Rule 28 of the Rules would be attracted only when the Inspector receives the intimation as to constitution of the Managing Committee full and complete in accordance with Rule 28 of the Rules and does not give any communication thereto within a period of 30 days. If the proposal received by the Inspector Schools is an incomplete one, as in the present case, since the nominee the local MLA, had not been included, the first proviso to Sub-rule (4) of Rule 28 of the Rules will not be attracted. Therefore, the Inspector of Schools has rightly refused approval of the reconstituted Managing Committee. We, therefore, do not find any infirmity in the order of refusal passed by the Inspector of Schools. While the Inspector of Schools might well refuse approval of the Managing Committee on account of its incompleteness, in our opinion, he should have taken recourse to the provisions of Sub-rule (9) of Rule 27 of the Rules, and should have reconstituted the Managing Committee after consultation with such person/authorities as he may consider necessary. In other words, in the case of such nature, the Inspector should have contacted the local MLA to obtain his nominee and thereafter should have approved the reconstituted Managing Committee in accordance with Rule 27(9) of the Rules. Be that as it may, since the Inspector has not yet taken any steps after receiving the proposal from the earlier Managing Committee, the Inspector would do well in reconstituting the Managing Committee in accordance with Sub-rule (9) of Rule 27 of the Rules within a period of two months from to-day and in the reconstituted Managing Committee the persons already intimated by the secretary of the Managing Committee in his letter for approval should be included.

The writ application is disposed of accordingly