
(1988) 11 OHC CK 0004
In the Orissa High Court
Case No : O.J.C. No. 2891 of 1986

Gaurahari Dash and Another	Vs	APPELLANT
Inspector of Schools, Mayurbhanj Education and Others		RESPONDENT

Date of Decision : 25-11-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Education (Management of Private Schools) Rules, 1980 — Rule 2(1), 3(3), 4, 4(1), 6
Orissa Education Act, 1969 — Section 27(4), 4(1), 7

Citation : (1989) 67 CLT 396

Hon'ble Judges : H.L. Agrawal, C.J; S.C. Mohapatra, J

Bench : Division Bench

Advocate : P.R. Barik and S.K. Dash, for the Appellant; Addl. Standing Counsel for O.P. Nos. 1 to 3, Bibbudhendra Misra and Karunakar Jena for O.P. Nos. 4 to 11 and 14, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—In this application under Article 226 of the Constitution of India Petitioners have assailed the reconstitution of the managing committee of Bairatpur High Managing Committee of Jankiria . High School and Ors. v. Inspector of School Mayurbhanj Circle and Ors. .

School an aided educational institution, governed under the Orissa Education Act, 1969 (hereinafter referred to as "the Act") and the Rules made thereunder. 2. u/s 7 of the Act every aided educational institution which is a school is to have a managing committee. Before the Orissa Education (Management of Private Schools) Rules 1980 (hereinafter referred to as the Rules") made under the Act came into force, managing committees were being constituted under the provisions of the Orissa Education Code which were Rules under the Act u/s 27 (4) of the Act. Managing committees constituted under the Code which were continuing on the date of commencement of the Rules were to continue for one year as provided under Rule 12 within which. they were to be reconstituted as

per the Rules. Accordingly a managing committee for Bairatpur High Schools was constituted under Rule 3 with effect from 15-11-1981. The same was approved by the Inspector as per Annexure 1 as provided in Rule 4 (1). Term of the managing committee is three years as provided in Rule 3 (6) and term of office of the members is also three years as provided in Rule 6 (1). Where a managing committee has not been reconstituted before expiry of the term of the members, the same is to continue for six months more whereafter the function of the managing committee vests in the Inspector as provided in Rule 6 (2), proviso. Shortly before expiry of the term of the managing committee and its members, Inspector intimated the Secretaries of the managing committees of different aided schools within his jurisdiction on 2-11-1984 (Annexure.2) that their term would expire on 14-11-1984 and accordingly proposals as required under Rule 4 (1) of the names of seven members under Rule 3 (3) (i) (d) are to be sent. Long thereafter- on 18-11-1985." Inspector issued an offence order (Annexure 3) in respect of Bairatpur High School that the outgoing managing committee having failed to submit the proposal as required under Rule 4 (1) within 90 days before the expiry of the term the same sent thereafter cannot be approved. Petitioners assailed the same in this Court in O.J.C. No. 64 of 1986. Grievance was not entertained on the ground that even the extended term of six months for the managing committee had elapsed (Annexure 4). The function of the managing committee" having vested in the Inspector be nominated seven members under Rule 3 (3) (i) (d) to constitute the new managing committee and sent the same on 17-12-1985 to the director for approval as required under Rule 3 (3) (i) (d) last proviso. By letter dated 23-12-1985 (Annexure-5) Director approved the same whereafter Inspector constitute the managing committee by office order dated 30-12-1985 (Annexure-6). Appeal against the reconstitution was not successful as is seen from the order dated: 30-9-1986 (Annexure-7). Aggrieved by the dismissal of the appeal, this writ application has been filed to quash Annexure 3, 5,6 and 7 and to give appropriate directions.

3. There is no scope to quash Annexure-3 since the same had already been unsuccessfully assailed in O.J.C. No. 64 of 1986" as revealed from Annexure-4 the order of this Court in the said case. As has been held In that case, the term of the managing committee even in respect of the extended period had elapsed. This, this writ application is to be examined on the basis that there was no managing committee in the school earlier to 18-11-1985.

4. Mr. P. R. Barik, the learned Counsel for the Petitioners submitted that:

(i) managing committee was not defunct as has been declared in the office order" (Annexure-3) and accordingly the same is liable to be quashed;

(ii) the Director had no scope to approve the seven members proposed by the Inspector" when the managing committee was not defunct and accordingly Annexure-5 being without Jurisdiction is is liable to be quashed;

(iii) inspector has no power to constitute a managing committee under

Annexure-6 and accordingly the same is without jurisdiction which is liable to be quashed;

(iv) the appellate authority not having taken into consideration the illegality in the constitution of the managing committee in Annexure-6 has committed an error apparent on the face of the record and accordingly, Annexure-7 is liable to be quashed; and (v) Inspector cannot withhold approval and allow the term of the managing committee to expire to take the functions of the managing committee to himself which defeats the right of the outgoing managing committee to nominate the seven members to the managing committee to be reconstituted.

5. It is not disputed that the outgoing managing committee nominated seven names which were proposed by the Secretary to the Inspector. While the Inspector refused to entertain the same having been received after 90 days, the claim of the Petitioners is that the same was sent within 90 days. Case of the Petitioners is that of receipt of intimation dated 2-11-1984, outgoing managing committee passed a resolution on 9-11-1984 nominating seven members for reconstitution of the managing committee and the same was sent to the Inspector. Rule 4 (1) provides that the names are to be proposed not less than ninety days before expiry of the term. It is not disputed that the term of the outgoing managing committee was to expire on 14-11-1984. Thus, not less than 90 days before 1-11-1984, the names ought to have been proposed. Inspector had no power to extend the period of 90 days. This period has been purposefully fixed so that the Inspector gets nine months to approve the managing committee. Where a person does not perform his part of the duty there is no scope for him or the person intended to be given benefit to blame the Inspector that he has intentionally become inactive to get the power to himself. As has been held in a recent decision of this Court reported in *Managing Committee of Jhinkiria High School and Others Vs. Inspector of Schools and Others*, the term of the managing committee expires, under the Statute and the Inspector is required under the Statute, to carry on the management, of the institution with the functions of the managing committee being vested in him as provided in Rule 9A., To avoid such a situation in action of the Inspector could have been assailed in this Court before expiry of the extended term of the outgoing managing committee. Operation of the statutory provision could have been arrested by this Court by interim order. Once the Statute operates, there is no scope for this Court to annul the same. This is more so when there is no irreparable injury. Besides, Petitioners could have raised this dispute in O.J.C. No. "64 of 1986 and after finality of that case, there is no scope to reopen the matter again.

6. As regards the next, contention of Mr. Barik that the Inspector is not correct to state in Annexure.3 that the managing committee is defunct has no force. The term "defunct managing committee" has been defined in Section 2 (I) (c) of the Rules. It reads as follows:

(c) "Defunct Managing Committee means a Managing Committee of which the

total membership falls below the number required to make the quorum prescribed under the rules either by death resignation or cessation of membership by not attending four consecutive meetings or otherwise or which does not hold its meetings as per requirement of the rules or which fails to pay salaries of the staff regularly or discharge its legitimate functions imposed on it.

On a plain reading of the definition it is Clear that the managing committee becomes,defunct when the total membership falls below the number required to make the quorum prescribed under the rules. Cessation of office is the ground for the total membership being reduced. Quorum for a meeting of the managing committee shall be four as provided under Rule 7 (3). When under Rule 6 term of office of the members of the managing committee is for three, years or for the extended period of six months thereafter and when a managing committee is to continue in office for the full term of three years as provided in tule 3 (6), the membership of the members of the managing committee including the President and the Secretary ceases on expiry of the period of three years six months in the maximum. Thus, on account of cessation of membership on expiry of the term there is no scope for a quorum of your members. Accordingly, such a situation brings the managing committee within the definition of "defunct managing committee". Inspector of schools is justified in the office order (Annexure -3) to intimate that the managing committee has become defunct. There is no scope to quash Annexure-3 on this ground also.

7. Under Rule 9-A the powers and functions of the managing committee which has become defunct vest in the Inspector till a managing committee is constituted in accordance with law. Under Rule 4 (1) the Secretary of the managing committee is required to move the Inspector in a proposal for constitution of the managing committee for the next term with details of members other than those to be nominated by the Inspector by enclosing the resolution of the managing committee in support thereof. The managing committee is to nominate seven members as provided in Rule 3 (3) (i) (d) of the rules. Last proviso thereof authorises the Inspector to nominate seven names subject to the approval of the Director. Accordingly the Inspector sent the names of seven members to the Director which was approved by the Director as per Annexure - 4. This is in accordance with Rule 3 (3) (i) (d)." last proviso. Power of Inspector under Rule 4 which requires him to consider the names recommended by the managing committee to, accord his approval is not taken away. Since the power of nomination and power of consideration both vest in the Inspector. Rules provide for approval of the nomination of the seven, names by the. Inspector functioning as the managing committee to be approved by the Director a higher authority. No sooner the approval of the Director is received, power of selection of other members u/s 4 (1) is to be exercised by the Inspector. Thus, reconstitution of the managing committee by the Inspector communicated under Annexure-6 is valid in law. There is no scope to quash the same.

8. Once it is held that Annexure - 6 is in accordance with law, there is no scope

for interference with Annexure - 7 the appellate order, where no challenge has been made to the eligibility of any member of the reconstituted managing committee.

9. In the result, the writ application has no merit which is accordingly dismissed. There shall, however, be no order as to costs.

H.L. Agrawal, C.J.

10. I agree.