

(1998) 08 OHC CK 0051
In the Orissa High Court
Case No : O.J.C. No. 894 of 1996

Giridhari Gochhayat and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-08-1998

Acts Referred:

Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 — Rule 25(1)
Orissa Education Act, 1969 — Section 3, 7(4)

Citation : (1998) 2 OLR 522

Hon'ble Judges : S.C. Datta, J;A. Pasayat, J

Bench : Division Bench

Advocate : Budhadev Routray, B. Dash, B. Sarangi, S.S. Kanungo, B. Parida, S. Sahoo and A.K. Baral, P. Mohanty, D.N. Mohapatra and G. Satpathy and J. Mohanty, for the Appellant; B. Rath, B. Senapati, S.N. Mohapatra, S. Ghose, J.N. Rath, S.K. Jethy, P.S. Samantara and S. Mohanty (for opp. party No. 3), B.P. Mohanty, N. Paikray, R.P. Kar, A.N. Ray, M.K. Badu and A. Das (for opp. party No. 4) and Additional Government Advocate (for opp. party No. 1), for the Respondent

Judgement

A. Pasayat, J.—Nomination of Banshidhar Biswal (opp. party No. 3) as President of Governing Body of Bhagabati Mahavidyalaya, Konark is under challenge in this writ application. Said nomination was made by the State Government in the Higher Education Department which was approved by the Director of Higher Education, Orissa in purported exercise of power under Rule 25(1)(i) of the Orissa (Establishment, Recognition and Management of Private Colleges) Rules, 1991. The institution is an aided educational institution within the meaning of Section 3(b) of the Orissa Education Act, 1969 (in short, the "Act").

2. Main plank of challenge is that opposite party No. 3 is not an "eminent educationist" which is the sine qua non for such nomination. Stand of the petitioners is that opposite party No. 3 is not even a Graduate and was a Clerk in the Secretariat and by no stretch of imagination can be treated as an eminent

educationist. Petitioner No. 1 was nominated as a Member of the Governing Body of the college in June, 1992, and petitioner No. 2 is a person interested in the field of education and has enough contribution for establishment and management of the college in question.

3. Background as indicated by the petitioners is essentially as follows :

After the 1991 Rules came into force on 18.12.1991, the State Government nominated one Prafulla Kumar Patra as President of the Governing Body, vide Office Order No. 29,580 dated 8.6.1992 in exercise of power conferred on it under Rule 25(1)(i) of 1991 Rules. After such nomination, other members who are interested in the field of education were nominated, by the nominated President. Petitioner No. 2 was one such nominated member. Rule 25 which is the pivotal provision so far as relevant reads as follows:

"25. Governing Body of Aided College - (1) Notwithstanding anything contained in these Rules as soon as the College becomes an aided college, the Governing Body of the College shall be reconstituted in the following manner:

(i) The Collector/Additional District Magistrate/Sub-Collector of the sub-division in which the college is situated shall be ex officio President of the Governing Body and the Principle of the College or the teacher-in-charge of the Principal shall be its ex officio Secretary:

Provided that Government may nominate any eminent educationist to be the President who shall continue as such during the pleasure of the Government. In such cases the Collector/Additional District Magistrate/Sub-Collector shall be a member:

Provided further that in case of a college established and managed by a Trust, Government shall appoint a nominee of the Trust as President of the Governing Body and in such cases the Collector/Additional District Magistrate/ Sub-Collector shall be member of the Governing Body.

(ii) Two senior-most teachers of the College shall be ex officio members of the Governing Body.

(iii) The Member of Legislative Assembly representing the constituency in which the College is situated and the Chairman of the Panchayat Samiti/Municipality/ Notified Area, as the case may be, in which the college is situated shall be ex officio member of the Governing Body.

(iv) The Vice-Chancellor of the University, the Director and the Member of Parliament representing the Parliamentary Constituency in which the College is situated shall nominate one member each who shall hold office during their pleasure.

(v) Four persons of the locality interested in the field of education which may include a donor, one person from Scheduled Tribe or Scheduled Caste community and one woman shall be nominated by the President of the Governing Body to be

members of the Governing Body.

xxx xxx xxx."

Under Section 7(4) of the Act, term of the Governing Body is three years, and therefore, the term of the Governing Body constituted on 8.6.1992 continued for three years. Till 10.1.1996 no Governing Body was reconstituted by the State Government and the Director of Higher Education, Orissa. Suddenly on 11.1.1996 the State Government in the Higher Education Department nominated opp. party No. 3 as President of the Governing Body. Decision of the State Government was communicated to the Director by Office Order dated 11.1.1996. In the said letter of nomination, opposite party No. 3 was directed to submit his nomination of other persons as provided in Rule 25(1)(v) of the Rules. As indicated above, the challenge is to the nomination of opposite party No. 3 on the ground that he is not an eminent educationist.

4. Learned counsel for State and opposite party No. 3 have taken the stand that though opposite party No. 3 is not a graduate as claimed, yet that is not a ground to ignore his eminence as an educationalist.

5. A brief history of the power relating to such nomination needs to be noted. The fore-runner of the present Rules was the Orissa Education (Management of Private Colleges) Rules, 1979 (hereinafter referred to as the "old Rules"). Sub-rule (3) of Rule 3 of the said Rules held the field so far as nomination is concerned. The requirement then was "person interested in the field of education". The expression "eminent educationist" has not been defined. An Educationist is "one who is skilled in the methods of education and teaching"; and "one who promotes education". The expression had come up for consideration in several cases before this Court, and it was felt that neither it is easy to explain nor to conceive. It was observed in OJC Nos. 3130 and 3359 of 1992 (Mardraj Mohan Senapati v. State, and Ashok Kumar Sahoo v. State) disposed of on 1.3.1993, that the rule making authority can consider whether the expression "eminent educationist" needs any definition or elucidation. It is interesting to note that originally in the old Rules the requirement was "person interested". From 1991 till 1997 the requirement was "an eminent educationist", and thereafter again from June, 1997 the expression "person interested" has been substituted, by Notification dated 28.6.1997 of the Department of Higher Education vide S.R.O. No. 326/97 published in the Orissa Gazette (Extraordinary) dated 30.6.1997. But that has little significance so far as the dispute at hand is concerned.

6. The expression "eminent educationist" cannot be given a fixed meaning. It has to vary from situation to situation and from place to place, inasmuch as a person to be accepted as an eminent educationist, if the context be the entire country, even a person so regarded in a State would not foot the bill. Similarly, if the entire State be the consideration, a district level eminent educationist would not fulfil the criteria. The word "eminent" means high in station, rank, or repute,

distinguished, conspicuous, noteworthy, outstanding, prominent, celebrated, renowned, illustrious, Eminent" is an adjective linked with noun "eminence". The meaning of the word "eminent" does not cause any problem. The ordinary dictionary meaning of "eminent" is rising above others; conspicuous; distinguished; exalted in rank or office.

The word "education" is derived from the Latin word "educa" which means bringing out of latest faculties. The New Oxford Illustrated Dictionary, Vol. I gives its meaning as one who studies the science and methods of education. According to Oxford English Dictionary "educationist" means one who makes a study of science or methods of education, an advocate of education. In Oxford English Dictionary Vol. Ill, meaning of "educationist" is mentioned as specialist in theories and methods of education. In Chambers 20th Century Dictionary, meaning of the said expression is a person skilled in methods of education or teaching; one who promotes education. Both "education" and "educationist" are terms of noun. "Education" means the act or process of imparting or acquiring general knowledge, developing the powers of reasoning and judgment, and generally of preparing oneself or others intellectually or mature life; the act or process of imparting or acquiring particular knowledge or skills. It is the result produced by instruction, training or study. Thus the word has very wide import. The expression "person interested in the field of education" as appearing in the old Rules has been replaced by the expression "eminent educationist" in the new Rules. In Rule 25 both "eminent educationist" or "interested in the field of education" find mention. So far as nomination of four members of the locality is concerned, it is to be made in respect of persons interested in the field of education. Obviously, therefore, the "person interested in the field of education" is conceptually different from one who is an "eminent educationist". This distinction appears to have been kept in view by the rule making authority.

7. It has to be noted what is the real purpose of nominating an eminent educationist to be the President. The purpose is to bring in an academic atmosphere in the institution. The students are at the threshold of higher educational careers. If the atmosphere in the institution is not conducive for proper study, the only result will be pollution of study and academic atmosphere of the institution.

8. The file relating to nomination of opp. party No. 3 was produced by the learned counsel for State. It appears there from that on 19.12.1995, the Minister of Planning and Co-ordination and Higher Education passed the order relating to nomination of opp. party No.3. The order reads as follows:

"The term of the Governing Body of Konark Bhagabati Mahavidyalaya has since expired with effect from 16.12.1995. While reconstituting the Governing Body of this college, Govt. intend to nominate the President of the College.

Sri Banshidhar Biswal, At. Achyutpur, P.O. Gararupass, Dist. Puri is a renowned man of the locality having vast interest in the cause of education. He is

associated with establishment and organisation of a number of High Schools and Colleges of the area including Konark Bhagabati Mahavidyalaya. I consider him as an eminent educationist, capable of managing this college.

I, therefore, nominate him as the President of the Governing Body of this College.

DHE is requested to reconstitute the Governing Body with Mr. Biswal as the President with observance of due formalities."

A bare look at the above order shows that what weighed with the Minister was his "vast interest in the cause of education", and his association "with establishment and organisation of a number of High Schools and Colleges of the area including Konark Bhagabati Mahavidyalaya". The records do not show any material on the basis of which the above conclusion was arrived at by the Minister. As indicated above, the sine qua non for nomination is that the persons must be eminent educationists. It is not known on what materials the Minister came to hold that opp. party No. 3 is a renowned man of the locality having vast interest in the cause of education and about his association with establishment and organisation of educational institutions. Lot of factual aspects have been highlighted by the parties. Petitioners have highlighted that opp. party No. 3 is not even a Graduate though for some time he was Secretary of the institution. He was later on removed from the office of Secretary by the Governing Body on various allegations. There are allegations of misappropriation of college funds. The resolutions dated 5.4.1991 and 21.11.1984 of the institution have been filed. In the counter filed on behalf of opp. party No. 1 reference has been made to details furnished by opp. party No. 3 about his wider activities in the social, cultural, academic and educational fields as well as an editor of a daily newspaper. These materials were not before the authorities when the nomination was made. It has been further stated that opp. party No. 3 was the Secretary of the institution from 1978 to 1983 and thereafter was a member. He has founded many institutions to cater education in the field of social services, nation building and world peace besides other traditional subjects. It is fairly accepted that these materials were not a part of record when nomination was made. It is also fairly accepted that there is nothing in the record to show that these materials were available for consideration when the nomination was made. In paragraph 9 of the counter affidavit it has been stated that there is no bar for nomination of a political man as President of a Private College if he conforms to the criteria of "a person interested in the field of education" as required under the Rules. This itself shows that the consideration was that of "person interested in the field of education".

9. It is the further stand of opp. party No. 1 that taking into consideration the observations made by this Court in some earlier cases referred to above, the expression "eminent educationist" has been substituted by the expression "person interested in the field of education" by the notification dated 28.6.1997. As observed above, that cannot have any retrospective effect to cure any defect in the nomination made prior to the said notification, and prior to the substitution

of the expression "eminent educationist" for the expression "person interested in the field of education". This is clearly a case where the authorities acted without any material in the matter of nomination and there has been non-application of mind.

10. That being the position, opposite party No. 3's nomination as President by the impugned order vide Annexure-2 cannot be sustained and is accordingly quashed. State Government is free to reconsider the matter in accordance with law.

The writ application is allowed to the extent indicated above. No costs.

S.C. Datta, J.

11. I agree.