

(1970) 12 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jur. Case No. 1370 of 1970

Harishchandra Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-12-1970

Acts Referred:

Bihar High Schools (Constitution, Powers and Functions of Managing Committee)
Rules, 1964 — Rule 10B

Citation : AIR 1971 Patna 406

Hon'ble Judges : Shambhu Prasad Singh, J

Bench : Single Bench

Advocate : Prabha Shankar Mishra, Rajendra Prasad Singh and Jiwan Shankar Srivastava, for the Appellant; Jaya Narayan, Kapildeo Singh, Narbadeshwar Prasad Singh, Sheodan Singh, Indu and Tara Kant Jha (Standing Counsel II), for the Respondent

Final Decision : Allowed

Judgement

Shambhu Prasad Singh, J.—By this application under Articles 226 and 227 of the Constitution of India the petitioner, a guardian of a student of High School, Barkagaon, in the district of Shahabad, has challenged the order dated 6th of July, 1970 (Annexure 3 to the petition) of the President, Board of Secondary Education, Bihar (respondent No. 2) dismissing the appeal or the petitioner before him against the constitution of the Managing Committee of the aforesaid school and holding that selection of the guardians' representatives to the Managing Committee of the school was valid. At a meeting dated 22nd of February, 1970, Dharamjit Singh and Rakchapal Singh (Respondents 5 and 6) were selected as guardians' representatives to the Managing Committee of the school. It is this selection which was challenged by the petitioner before the President, Board of Secondary Education.

2. The petitioner is a guardian of a student of the school is not in dispute. The main ground on which the selection of respondents 5 and 6 to the Managing

Committee is challenged is that the petitioner had no clear ten days" notice of the meeting as required by Rule 10-B of the Bihar High Schools (Constitution, Powers and Functions of Managing Committee) Rules, 1964 (hereinafter referred to as "the Rules"). Chapter III of the Rules deals with constitution of Managing Committee of a school, other than a proprietary school. It is admitted that High School, Barkagaon, is a school other than proprietary school and this Chapter applies to it. Rule 3, which is the first rule of this Chapter, lays down that Managing Committee of such a school shall consist of :--

- (1) all hereditary members and life members (declared under Rule 4);
- (2) the Headmaster (ex-officio);
- (3) a teacher's representative, to be appointed by the Headmaster in the manner laid down in Rule 5;
- (4) an officer of the Education Department of the State Government, to be nominated by the President of the Board of Secondary Education;
- (5) two donors, if available, to be elected in the manner laid down in Rule 6;
- (6) two guardians, to be elected in the manner laid down in Rule 7;
- (7) one member of the State Legislature representing or residing in the Assembly constituency in which the school is situated to be co-opted by the members referred to in items (1), (4), (5), and (6) of this rule; and
- (8) three persons of the locality, interested in education, of which one shall be a member of the Scheduled Castes or Scheduled Tribes if not otherwise a member, to be co-opted by the members referred to in items (1) to (7) of this rule.

Rule 10-B says that notice of every meeting for the election, selection or co-option shall be given to the persons concerned at least ten clear days before the day appointed for the meeting, stating therein the date, time and place of such a meeting. The case of the petitioner is that a notice about the said meeting dated 22nd of February, 1970 signed by the Headmaster (respondent No. 4) and dated 13th of February, 1970 was received by him only on 16th of February, 1970 and as the provisions of Rule 10-B are mandatory and ten clear days" notice was not given to the petitioner of the said meeting, the selection of respondents 5 and 6 as guardians" representatives to the Managing Committee is illegal and ultra vires. Mr. Prabha Shankar Mishra appearing for the petitioner at one stage wanted to argue that Rule 7 of the Rules was ultra vires on account of its vagueness, but, as no such ground was taken in the petition, he gave the point up.

3. Respondents 5, 6 and 10 (the teachers" representative to the Managing Committee of the school) have filed show cause stating that notices were issued to all the guardians as early as 7th of February, 1970 and repeatedly on subsequent dates through their wards and, therefore, the petitioner had ten clear days" notice of the meeting. Their case further is that the petitioner participated

in the meeting held on 22nd of February, 1970 and did not raise any objection as to want of sufficient notice; he cannot, therefore, be allowed to raise this objection.

4. A reply to the show cause petition of the aforesaid respondents has also been filed on behalf of the petitioner. It is denied therein that the petitioner attended the meeting dated 22nd of February, 1970.

5. In the impugned order it is not stated that the respondents took a plea before respondent No. 2 that the petitioner attended the meeting on 22nd of February, 1970. In the circumstances, it is not possible to hold, accepting the case of the respondents, that the petitioner attended the meeting dated 22nd of February, 1970.

I would proceed to decide this case on the assumption that the petitioner did not attend the meeting dated 22nd of February, 1970. The Headmaster of the school (respondent No. 4) appeared in person before respondent No. 2 and, as it appears from the impugned order, he stated before the latter that he circulated the letter of the Sub-divisional Education Officer (respondent No. 3} for the selection of guardians' representatives in all the classes vide his notice No. 62 dated 7th of February, 1970 and the circulation of the notice continued for a number of days in the class rooms in the first hour vide order book Nos. 63, 65, 66 and 87. Respondent No. 4 further stated that he also exhibited the notice on the notice board of the school, the information was also given to the public by dug-duggi (beat of drum) and the Mukhiyas of the Gram Panchayats were also requested to give publicity of the notice. According to him, he issued notice to guardians individually to be doubly sure. Respondent No. 2 verified the Adesh Pus-tika (Order Book) and found that the notice for the meeting contained signatures of all the class-teachers and was dated 7th of February, 1970. He further found that the notice was also circulated for a number of days after 7th of February, 1970 in class rooms in the first hour. He also verified the attendance register of class X and found that the boy, Ajoy Kumar Singh, the ward of petitioner, was present all through the month of February, 1970.

Thus, in his opinion, the petitioner did have information about the meeting as early as 7th of February, 1970. There is nothing on the record to show that the Mukhiyas of the Gram Panchayats actually gave any publicity to the notice. Therefore, it cannot be said that the petitioner received notice of the meeting through the Mukhiyas. There is also nothing on the record to indicate as to on what date information was given to the public by beat of drum. It cannot, therefore, be said that notice, if at all, given by beat of drum was before 12th of February 1970. Ten clear days means ten days exclusive of the date on which the notice is given and the date on which the meeting is held. This has been so held in *Jai Bhagwan Sharma v. Matu Ram Bhola Ram*, AIR 1964 Punj 135 and *Sureshchandra and Others Vs. Birdichand and Others*, . I am not, therefore, inclined to hold that the petitioner had ten clear days' notice or any notice at all as a result of announcement of the date of the meeting by beat of drum or

publicity given to the date by the Mukhiyas of the Gram Panchayats.

6. There is no reason, however, to doubt the statement of respondent No. 4 before respondent No. 2 that notice was circulated in all the classes of the school on 7th of February, 1970 and for a number of days thereafter and that it was exhibited on the notice board of the school. Because the ward of the petitioner was present in the class throughout the month of February, 1970, it can also safely be presumed that he had notice of the date of the meeting. A question, therefore, arises whether the notice to the ward of the petitioner of the date of the meeting can be deemed to be a notice to the petitioner himself. Rule 10-B of the Rules requires that the notice be given to the "persons concerned". Learned counsel for the petitioner, therefore, contended that the ward is not a person concerned and notice to him cannot be deemed to be a notice to the guardian who is a person concerned. On the other hand, it was contended by learned counsel for respondents 5, 6 and 10 that whereas Rule 10 (6) specifically provides that notice of the meeting referred to in Rule 10 (5) shall be served on each of the members, there is no such provision in Rule 10-B for the notice of the meeting under Rule 7,

I am inclined to agree with his contention that service of notice under Rule 10 (6) must always be personal service, but the service of notice under Rule 10-B need not necessarily be a personal service. Service of the notice on an adult male member of the joint family of the person concerned or by post may also be a valid service within the meaning of Rule 10-B. But the service must be of such a nature that it can safely be presumed that the information of the date of the meeting must have been conveyed to the person concerned- Wards of the guardians in the school are generally minors. They are not likely to appreciate the importance of the meeting and even after having known the date of the meeting. all of them may not consider it necessary to convey the date to their guardians. If the Headmaster takes precaution of handing letters to the wards with special direction to them to make them over to their guardians, it may be presumed that they must have delivered the letters to their guardians and that may amount to the notice on the guardians within the meaning of Rule 10-B. But a general notice in the class rooms or on the notice board of the school informing the wards of the date of the meeting, in my opinion, cannot be deemed to be a valid notice to the persons concerned, i.e., the guardians of the wards within the meaning of Rule 10-B. In absence of any material on the record whether the particular ward did inform his guardian of the date of the meeting notified in the school, the question has to be decided considering the cases of all the wards together. Some of them who are in lower classes may not at all appreciate the importance of the meeting; others may be negligent or playful and may not at all consider it necessary to inform their guardians of what they have learnt in the school. It may also be that some of them, though present in the school on that date, might be out of the class room for some purpose when the notice is read over. I am, therefore, of the opinion that a general notice to the wards in the class rooms or on the notice board of the school is not a notice to the guardians

within the meaning of Rule 10-B.

7. It was contended by learned counsel for respondents 5, 6 and 10 that the petitioner admittedly had notice of the meeting dated 22nd of February, 1970 on 16th of February, 1970 and even if it was not ten clear days" notice, that would not render the selection of respondents Nos. 5 and 6 as guardians" representatives as invalid. As the guardians" representatives to the Managing Committee are to be selected by lot and not by election, as in the case of donors" representatives, a guardian intending to be a candidate for selection is not prejudiced by not having ten clear days" notice as he has not to make any preparation or canvass for his selection. He has merely to find out a proposer and a seconder to propose and second his name at the meeting before the selection is made. The question which really arises for consideration is whether the provisions of Rule 10-B are mandatory or directory. If the provisions are mandatory and a meeting is held in violation of the provisions, the election or selection at such a meeting has to be held as invalid. If the provisions are directory, then even if there is violation of the rule, the election or selection cannot be held to be invalid.

It cannot be said that the provisions of the rule are mandatory so far elections at meetings under Rule 6 are concerned, but directory for selections at meetings under Rule 7. In case of election to the Managing Committee a candidate will require ten clear days" notice to find out who the voters are and to canvass for him to them. It is well established that where a prescription imposed by the statute or statutory rules affects the performance of a duty only it is directory, and where it relates to a privilege or power it is mandatory or imperative. In my opinion, the prescription in Rule 10-B that there must be ten clear days* notice of the date of the meeting does not merely affect the performance of a duty but relates to a privilege of the person concerned on whom the notice is to be served. It will cause great inconvenience to persons concerned who have got no control over the authorities who are to serve such a notice if it is not served according to the requirements of Rule 10-B, specially in cases of elections at meetings held under Rule 6, and the provisions of the rule, therefore, are to be held as mandatory and imperative.

If the provisions of the rule are mandatory for the meetings held under Rule 6, they are also to be held mandatory for the meetings held under Rule 7 and other rules. Further, it cannot be said that a guardian who wants to be a candidate for selection to the Managing Committee of the school has got nothing to do in that connection. There being no published list of the guardians he has to acquaint himself with the names of all the guardians for finding out whether others whose candidature may be proposed at the meeting are really guardians or not and eligible for being selected to the Managing Committee. In the instant case, as the meeting dated 22nd of February, 1970 was held in violation of Rule 10-B without ten clear days" notice to the guardians, as according to respondent No. 4 he issued notices in writing to the guardians only on 13th February, 1970, it was

illegally held and selection of respondents 5 and 6 to the Managing Committee at that meeting must also be held to be illegal.

8. It was also contended by Mr. Mishra for the petitioner that the meeting under Rule 7 is to be convened by the Sub-divisional Education Officer in case of schools for boys and a notice from the Headmaster of the school for such a meeting cannot be taken as a notice at all. I am not inclined to accept this contention. As it appears from the copy of the notice (annexure 1 to the petition) respondent No. 4, the Headmaster, issued the notice as directed by respondent No. 3, the Sub-divisional Education Officer. Who actually signs the notice on behalf of the person issuing the notice is immaterial. The notice was issued under orders of the Sub-divisional Education Officer and it cannot be held to be illegal because it was signed by the Headmaster.

9. In the result, the application is allowed, the order of respondent No. 2 contained in annexure 3 to the petition is quashed and the selection of respondents 5 and 6 to the Managing Committee of the High School, Barkagaon, is set aside. In the circumstances of the case there will be no order as to costs.