
(1995) 12 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 7232 of 1995

Kalindi Charan Behera

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 18-12-1995

Acts Referred:

Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 — Rule 25
Orissa Education Act, 1969 — Section 27

Citation : AIR 1996 Ori 155

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : Bijan Ray, A.K. Hohanty, B. Mohanty, D. Chhetray, S. Patnaik, R.K. Biswal and C. Choudhury, for the Appellant; Akhil Mohapatra, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pasayat, J.—Petitioner calls in question legality of the order passed by the Director of Higher Education, Orissa regarding withdrawal of nomination of petitioner as President of the Governing Body of Maha-purusha Achyutananda Mahavidyalaya, Lomalo in the district of Cuttack with immediate effect, and that the Collector, Cuttack is to be ex officio President of the Governing Body of the said institution from the date of issuance of the order. The impugned order is purported to have been passed in accordance with the provisions of Rule 25(l)(i) of the Orissa Education (Establishment, Recognition and Management of Private Colleges) Rules, 1991 (in short, "the Rules") framed under the Orissa Education Act, 1969 (in short, "the Act").

2. The factual position is almost undisputed, and the controversy lies within a narrow compass. According to the petitioner, withdrawal of nomination of the petitioner as President is illegal as no reason has been indicated for such withdrawal. There was no pressing need for such withdrawal, particularly when

the term of office is to expire on 17-12-1995. In exercise of powers conferred on the Director of Higher Education, Orissa under Rule 25 of the Rules, the Governing Body of the College was constituted for a period of three years with effect from the date of notification, i.e., 17-12-1992, and the petitioner who was then M. L. A. and the Minister, Energy was nominated as President.

3. Petitioner's stand is that though the Government had the option to withdraw the nomination at their pleasure, same cannot be arbitrary, mala fide and based on erroneous considerations. Petitioner's case is that he belongs to opposite party and the ruling Congress (I) Party wanted his removal without any rhyme and reason on political considerations for which his nomination has been withdrawn. Further, no opportunity was granted to the petitioner before withdrawal of nomination and same was in violation of the principles of natural justice. Reliance was placed on a decision of this Court in Ananta Kumar alias Charan Jena and Others Vs. State of Orissa and Others, .

The State has stoutly defended its action by stating that there were no mala fides involved and in any event the petitioner has no right to continue as President, particularly when his continuance was at the pleasure of the Government. There was also no question of granting opportunity to petitioner to have his say because the pleasure was that of the Government and not of the petitioner.

4. Rule 25 on which both sides place reliance 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 Principal of the College or the teacher in-charge of the Principal shall be its ex officio Secretary :

Provided that Government may nominate any eminent educationalist 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 a member of the Governing Body.

xxx xxx xxx"

It is to be noted that in Ananta Kumar alias Charan Jena's case (AIR 1992 Ori 12) (supra), one of us (Pasayat, J.) was of the view that whenever there was proposal to substitute any nominated member, the member proposed to be

substituted must be given a reasonable time to have his say against the proposed action. The facts of the said case are clearly distinguishable because Rule 5(1) of the Orissa Education (Management of Private Colleges) Rules, 1979 provided grant of such opportunity.

5. The action is within the administrative authority of the States. The rules of natural justice depend upon particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. The legislature while conferring the power on an administrative authority may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and communicated to the aggrieved party and there may be specific provision for dispensing with such requirement. In the absence of any specific provision, conclusion is inevitable from the nature of the subject-matter, the scheme and the provisions of the enactment. The public interest underlying such a provision outweighs the salutary purpose, namely, chances of arbitrariness and unfairness in the process of decision making which are essential ingredients of rules of natural justice. The pleasure doctrine contained in Rule 25 does not in any way put any stigma on the character of the nominated member. As observed by the apex Court in *Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others*, question of grant of any opportunity before nomination is withdrawn does not arise. Almost a similar provision contained in Section 9 of the United Provinces Municipalities Act, 1916 was challenged on the ground of arbitrariness.

The apex Court held that there was no violation of Article 14 of the Constitution. It was also observed that contingency usually arises with the change of ruling party in the Government. Even in the case of highest functionaries in the Government like the Governors, the Ministers, the Attorney General and the Advocate General are removable at the pleasure of the competent authority under the law, though they discharge their duties efficiently, and it cannot be said that they are bound to demoralise or remain under a constant fear of removal, and as such do not discharge their functions in a proper manner during the period they remain in the office. The ratio in *Om Narain Agarwal's* case (*supra*) applies in full force to the present case.

6. Great emphasis was laid by the learned counsel for the petitioner on certain observations of the apex Court in *Union of India and Another Vs. Tulsiram Patel and Others*, . The facts of that case are clearly distinguishable. The case related to applicability of pleasure doctrine and its effect on the provisions of Article 311 of the Constitution. In that context it was observed that the pleasure doctrine is not based upon any special prerogative of the Crown but upon public policy. Reference was made to earlier decisions in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, at 759 and in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, at 620-621. The apex Court referred to the language used in relevant statutes and expressed the view about scope and ambit of the doctrine. Those decisions have no application to the facts of the

present case.

7. It is true as contended by the petitioner that the Governing Body is to continue in office till 17-12-1995 to complete its term, and the impugned order was passed on 19-8-1995. That is of no significance, in view of what has been stated above.

8. The writ application fails, and is dismissed. No costs.

P.C. Naik, J.

9. I agree.