
(2006) 12 OHC CK 0051
In the Orissa High Court

Kanhu Charan Swain

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Citation : (2007) 104 CLT 189 : (2007) 1 OLR 296 Supp

Hon'ble Judges : R.N. Biswal, J;P.K. Mohanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—Shorn of unnecessary details the case of the Petitioner is that Sri Raghunath Swamy Girls High School "(here-in-after referred to as "S.R.S. Girls" High School") established in the year 1992 at Ballipadar under Ganjam District is a private unaided recognized institution. The Petitioner was the secretary of the Managing Committee of the said School from 20.7.2001 to 20.7.2004. Before expiry of the term of the said Managing Committee, the Petitioner convened a meeting for reconstitution of the Managing Committee and after observing all formalities, sent a panel of names to the Inspector of Schools, Ganjam Circle, Berhampur, Opp. Party No. 3 vide Annexue 6 dated 20.4.2004 to take steps for approval of the proposed Managing Committee. Though the list was sent within the stipulated time as per law, Opp. Parties 2 and 3 did not take any step and slept over the matter. Opp. Party No. 5 sent 3 panel of names for approval on different dates one after the other. When none of the proposals was approved, she sent the 4th proposal on 27.5.2005 vide Annexure 10 which was approved by the competent authority vide Annexure 12 on 5.7.2005.

According to the Petitioner in terms of Rule 27 of the Orissa Education (Establishment, Recognition and Management of Private High Schools) Rules 1991 (hereinafter referred to as "1991 Rules") when the outgoing Managing Committee having passed a resolution in a meeting, nominated 7 members and sent the same to the Inspector of Schools (Opp. Party No. 3) for taking steps for approval, Opp. Parties 2 and 3 without considering the same ought not have

approved the panel of names vide Annexure-12 dated 5.7.2005 sent by Opp. Party No. 5. Hence the Writ Petition with prayer to quash the order passed by the Director, Opp. Party No. 2 vide Annexure 12 and to approve the proposal sent by the Petitioner.

2. Opp. Party No. 3. in a separate counter-affidavit stated that on 20.7.2001 Opp. Party No. 2 approved the Managing Committee of S.R.S. Girls' High School where the Petitioner was elected as the Secretary. The approval order of the said Managing Committee was challenged by Opp. Party No. 5 in O.J.C. No 9733 of 2001 before this Court, which remained sub-judice till 6.9.2004 when it was withdrawn. Opp. Party No. 3 admitted that Petitioner had submitted a proposal on 20.4.2004 for reconstitution of the new Managing Committee, but pleaded that since the Managing Committee wherein the Petitioner was the secretary was not functioning and the approval of the said Managing Committee was under challenge in O.J.C. No. 9733 of 2001, he did not take any step for approval of the proposal submitted by the Petitioner. Soon after disposal of the O.J.C, he recommended the proposal for reconstitution of the Managing Committee sent by Opp. Party No. 5, as the proposed Managing Committee was constituted as per Rule 25 of the 1991 Rules, on receipt of which Opp. Party No. 2 vide his letter-dated 29.11.2004 directed the Joint Director (SE) Regional Directorate of Education, Berhampur to recommend a separate proposal after conducting an enquiry in the School. The proposal of the Joint Director (SE) submitted before Opp. Party No. 2, the Director, through Opp. Party No. 3 was not approved as the constitution of the Managing Committee was made under Rule-28 of the 1991 Rules treating the school as an aided institution, even though it was a non-aided school. As the school was selected to receive Block grant only and not full aid, reconstitution of the Managing Committee was to be made under Rule 25 of the 1991 Rules. So, Opp. Party No. 2 vide his letter-dated 29.4.2005 sought for a fresh proposal for reconstitution of the Managing Committee under Rule 25 of the 1991 Rules. Accordingly Opp. Party No. 5 submitted a fresh proposal, which, on being duly recommended by Opp. Party No. 3 was approved by Opp. Party No. 2 on 5.7.2005 and block grant @ 40% was paid to the staffs of the school. It is the further case of Opp. Party No. 3 that proposal for reconstitution of the Managing Committee dated 20.4.2004 submitted by the Petitioner was not taken into consideration since it was submitted beyond 90 days of the expiry of the terms of the outgoing Managing committee, no resolution of staff electing teachers representative was made, certificate of no litigation was not signed by Opp. Party No. 5 as required under law, Shri Udayanath Sahu, a member of the proposed Managing Committee had not signed in the willingness certificate, willingness certificate of Opp. Party No. 5 was also wanting and that Smt. K.Nalin Patra, a member of the said Managing Committee expressed her unwillingness to be a member of the Managing Committee on 22.04.2004 vide Annexure-B/3. Hence Opp. Party No. 3 presses for dismissal of the Writ Petition.

3. Opp. Party No. 4 in his counter affidavit, contended that after disposal of O.J.C. No. 9733 of 2001 and 10091 of 2001, a new Managing Committee was

constituted in the General Body meeting held on 24.9.2004 and on being permitted by the General Body he forwarded all the relevant documents to the Inspector of Schools, Opp. Party No. 3 on 25.9.2004 who in turn forwarded the same to Opp. Party No. 2 for necessary approval. As per the direction of Opp. Party No. 2, the Joint Director (S.E) visited the School and after conducting spot enquiry submitted his report on 27.12.2004 on the basis of which, the Headmistress of the school, Opp. Party No. 5 again submitted a fresh proposal to Opp. Party No. 3, who recommended the same to Opp. Party No. 2 and the latter vide his office order No. 29072 dated 5.7.2005 approved the new Managing Committee of the school.

4. In her counter affidavit Opp. Party No. 5 stated that the school in question was made eligible to get 40% block grant with effect from 1.1.2004. For releasing the said grant, the new Managing Committee was reconstituted as per the guidelines contained in gazette notification dated 20.9.1994 of the Department of School and Mass Education, and the name and address of the members thereof were sent to Opp. Party No. 2 for approval through Opp. Party No. 3. On receipt of the same, Opp. Party No. 2 vide letter dated 29.11.2004 instructed the Joint Director (S.E) to conduct a spot enquiry in connection with reconstitution of the Managing Committee. Accordingly, he enquired into the matter and submitted his report, relying on which Opp. Party No. 2 approved the proposal of Opp. Party No. 5 on 5.7.2005. Under such circumstances Opp. Party No. 5 presses to dismiss the Writ Petition.

Learned Counsel for the Opp. Parties submits that since O.J.C. Nos. 9733 of 2001 and 10091 of 2001 challenging the validity of the approval order of the outgoing Managing Committee were sub-judice till 6.9.2004 when the same were withdrawn the proposal sent by the said Managing Committee was rightly not considered. Admittedly the order of approval of the outgoing Managing Committee was not suspended by any interim order in either of the aforesaid O.J.Cs. There is also nothing to indicate in the pleadings of the Opp. Parties that during the term of the office of the outgoing Managing Committee the management of the school in question was vested with any other agency. So, mere pendency of the aforesaid two O.J.Cs. was not a bar for Opp. Party No. 3 to send the proposal for approval of Opp. Party No. 2.

Learned Counsel for the Opp. Parties further submit that since the Petitioner did not send the proposal (Annexure-6) along with the relevant documents viz. resolution of the staff, electing teachers representative, willingness certificate of Shri Udayanath Sahoo, a proposed member and that of Opp. Party No. 5, declaration of members about their willingness, and undertaking about absence of litigation it has rightly not been considered. In fact, if those documents were not sent to the Opp. Party No. 3 along with the proposal, he could have very well asked for the same from the Petitioner.

6. As envisaged under Rule 27 of the 1991 Rules not less than 90 days prior to the date of expiry of the term of the Managing Committee a resolution should be

passed in a meeting of the Committee nominating 7 members to be the members of the next Managing Committee to succeed it, on completion of its term. Learned Counsel for the Petitioner submits that since the outgoing Managing Committee was approved on 20.7.2001, its term was to expire on 20.7.2004. The proposal having been sent on 20.4.2004 it was within time. Per Contra Learned Counsel appearing for the Opp. Parties submit that the term of the outgoing Managing Committee was to expire on 19.7.2002 and that the proposal for reconstitution of the new Managing Committee was sent one day after the due time. In view of the rival contentions of Learned Counsel for the parties it is to be seen whether the term of the outgoing Managing Committee expired on 19.7.2004 or 20.7.2004 and whether the resolution of reconstitution of the Managing Committee was made and sent in time. As per annexure-5, the outgoing Managing Committee was approved on 20.7.2001 for a period of three years with effect from the date of issue of the order. On 20.7.2001 itself this order was issued. At this stage it would be profitable to quote Section 9 of the Orissa General Clauses Act, which reads as follows:

Commencement and termination of time - In any Orissa Act it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

In the case of Naran Kandi and Others Vs. Bhima Praharaj and Another, , a Division Bench of this Court held as follows:

It is now well settled that Section 9 of the General Clauses Act cannot be construed to mean that it applies only where both the words "from" and "to" occur in a statute and not otherwise. On a plain reading of the Section, it is obvious that the word "and" is used only disjunctively to indicate two things, namely, if the first day is to be excluded it is sufficient to use the word "from" and if the last date is to be included, the word to be used is "to".

Learned Counsel for the Opp. Parties submit that by application of Section 9 of the General Clauses Act "20.7.2001" ought have been deducted from the calculation of the period of 90 days had the approval order been couched with the words "for three years from the date of approval". But as mentioned earlier, it has been stated in the approval order that it would be effective from 20.7.2001. So the said date cannot be excluded while counting the period of three years and as such the term of the outgoing Managing Committee was to expire on 19.7.2004. The same having been sent on 20.4.2004 it cannot be legally approved.

In terms of sub-Section (4) of Section 7 of Orissa Education Act, the Managing Committee of a school shall continue in office for a term of three years from the date of its approval by the prescribed authority. Annexure-5, the approval Order dated 20.7.2001 cannot over-ride the statutory provision. So, the words "for a period of three years with effect from" as found in Annexure-5 shall be read as

"for a period of three years from". By application of Section 9 of the General Clauses Act, as quoted above, in our view the term of three years would be 20.7.2001 to 20.7.2004. The outgoing Managing Committee was required to pass the resolution for reconstitution of the New Managing Committee within 90 days prior to 20.7.2004. If the period of 90 days is considered to be three English calendar months, then in terms of Section 9 of the Orissa General Clauses Act the said period of would be from 20.4.2001 to 20.7.2004. But as per Rule 27 of 1991 Rules the resolution for reconstitution of the Managing Committee should be made not less than 90 days prior to expiry of its term. This period of 90 day cannot be considered three calendar months. Since the month of May consists of 31 days, if 90 days is calculated from 20.7.2004, the period would expire on 19.4.2004. So, the outgoing Managing Committee ought to have passed the resolution for reconstitution of the proposed Managing Committee by 19.4.2004.

7. As per Rule 27 of the 1991 Rules as stated earlier, not less than 90 days prior to the date of expiry of the term of the Managing Committee a resolution should have been made in the meeting of the Committee nominating the members for the proposed Managing Committee. But the pleading of the Petitioner is silent with regard to the date of holding of such meeting. In absence of such date it would be held that the date on which the proposal was sent for approval, on that very date the resolution was passed. As stated earlier the proposal for reconstitution of the new Managing Committee was sent for approval on 20.4.2004, which is one day after the due time. Accordingly, the resolution sent for reconstitution of the new Managing Committee having been passed beyond the prescribed period it cannot be approved.

8. The second proviso to Rule 27 of the 1991 Rules, provides that the prescribed authority, here in the present case Opp. Party No. 2 is competent to reconstitute the Managing Committee where the outgoing Managing Committee does not pass any resolution nominating the members of the proposed Committee to succeed it. When no such resolution was made by outgoing Managing Committee within time as envisaged under law, Opp. Party No. 2 directed the Assistant Director (SE) to hold an enquiry in the school in question and to send a proposal. Accordingly he enquired into the matter and submitted his proposal reconstituting the Managing Committee in accordance with Rule 28 of the 1991 Rules, treating the school as an aided Institution. Since the school was not an aided one, the proposal was not accepted. On the basis of the proposal submitted by the Assistant Director (S.E.), Opp. Party No. 5 sent a proposal under Rules 25 and 27 of the 1991 Rules vide Annexure-10 which was approved under Annexure-12. In effect it would mean that Opp. Party No. 2 himself reconstituted the Managing Committee as the outgoing Managing Committee did not pass the resolution for such reconstitution in time.

In the result, the Writ Petition being devoid of merit stands dismissed.

P.K. Mohanty, J.

9. I agree.