

(1994) 09 OHC CK 0007

In the Orissa High Court

Case No : Original Jurn. Case No. 5533 of 1992

Kishori Mohan Mohapatra and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Orissa Education (Establishment, Recognition and Management of Private Colleges) Rules, 1991 — Rule 25(3)

Citation : AIR 1995 Ori 78

Hon'ble Judges : G.T. Nanavati, C.J.; P.C. Naik, J

Bench : Division Bench

Advocate : R.K. Mohapatra, U.K. Samal, K.B. Kar, S.K. Swain and R.K. Das, for the Appellant; A.K. Mohapatra, K.N. Parida, S. Sahoo, H. Misra and S. Panda, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

Nanavati, C.J.—The petitioners are members of the Governing Body of H. K. Mahatab College, Kupari. The Governing Body was constituted on 11-8-1989. They have challenged in this petition the reconstitution of the Governing Body by the two orders passed on 18-3-1992 and 12-5-1992, Annexures 4 and 5 respectively.

2. What is submitted by the learned counsel for the petitioners is that the Director granted approval to the reconstituted Governing Body without proper application of mind and, therefore, the approval granted by him under Rule 25(3) of the Orissa Education (Establishment, Recognition and Management of Private Colleges) Rules, 1991 (hereinafter referred to as "the Rules") is bad and of no consequence.

3. Rule 25, inter alia, provides that the Governing Body of a college shall be so reconstituted as to include amongst others one nominee each of the Vice-chancellor of the University, the Director and the Member of Parliament representing the Parliamentary Constituency in which the college is situated. In

this case, what appears to have happened is that no nomination was made by the Member of Parliament and also by the Vice-Chancellor. Therefore, in the order dated 12-5-1992 (Annexure 5), what is stated is "N.P., Bhadrak's nominee" and "Utkal University V.C.'s nominee." Thus, without knowing who will be the persons nominated by the M. P. and the Vice-Chancellor of the University, the Director granted the approval. The power which is conferred upon the Director under Sub-rule (3) of Rule 25 is to be exercised in a judicious manner and, therefore, it becomes the duty of the Director to see that proper persons constitute the Governing Body of the College. The act of approval is not to be performed mechanically but with the sense of responsibility and with proper application of mind. It is difficult to appreciate how, without knowing who will be constituting the Governing Body, the Director could have granted his approval. If the approval is permitted to be granted in the manner in which the Director has done, then the very purpose of giving approval would be lost. The Director, as it appears from the further provision made in Sub-rule (3) of Rule 25, has a right to object to a particular person being included in the list or to make a suggestion in that behalf. That also indicates that the Director has to consider suitability of each person who is going to constitute the Governing Body. As the Director in this case has granted approval without considering the relevant aspects, it has to be held that the approval was granted without proper application of mind. We, therefore, quash and set aside the order dated 12-5-1992 (Annexure 5).

4. Nomination of Shri Parsuram Pani-grahi, M.L.A. (opposite party No. 3) as the President of the Governing of the College also suffers from the same infirmity because there was no material before the authorities to show that he is an eminent educationist. Even though challenged, it is not pointed out what material was with them. Therefore, the order dated 18-3-1992 (Annexure 4) whereby approval was granted to the nomination of opposite party No. 3 as the President of the Governing Body of the college is also bad, and we quash and set aside the same.

5. In the result, we allow this petition and quash and set aside the orders dated 18-3-1992 and 12-5-1992, Annexures 4 and 5 respectively. It will be open to the authorities now to reconstitute the Governing Body in accordance with law. No order as to costs.

P.C. Naik, J.

6. I agree.