

(1968) 12 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 630 of 1968

Krushna Prasad Panda

APPELLANT

Vs

Inspector of Schools and Others

RESPONDENT

Date of Decision : 17-12-1968

Acts Referred:

Orissa Education Code — Article 41

Citation : AIR 1969 Ori 213

Hon'ble Judges : S. Barman, C.J;B.K. Patra, J

Bench : Division Bench

Advocate : L. Rath, for the Appellant; R. Mohanty, R.N. Misra, S.N. Kar and Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Patra, J.—This is an application filed by the petitioner for the issue of a writ of Mandamus quashing the order dated 6-6-1968 passed by the Inspector of Schools (Opposite party No. 1) reconstituting the Managing Committee of the Panchayat High School, Betada in the district of Balasore. A Managing Committee with the petitioner as Secretary had been formed sometime ago and was functioning smoothly. In January last, certain differences arose amongst the members of the committee inter se and between some of the members of the committee and public - outside. The students of the school also appear to have gone on strike. In these circumstances, the Inspector of Schools, Balasore in consultation with the District Magistrate formed a new Managing Committee and on 6th January, 1968 issued the impugned memo (Annexure -- A) which is as follows:--

"The following members will constitute the Managing Committee of Panchayat High School, Betada from the 8th June, 1968.

1. Sri Shyamasundar Panigrahi of Govindbhindha.
2. Sri Batakrishna Ray of Betada.

3. Sri Nagendra Nath Mohanty of Chhatria.
4. Sri Sanatan Mohanty of Barandua.
5. Sri Narendra Prasad Panigrahi of Madhusudanpur.
6. Sri Umakanta Mahapatra of Aruhan.
7. Sri Sankhali Roul of Ralang.
8. Sri Anama Charan Mohapatra of Barendua.

The Secretary of the existing managing committee of Panchayat High School, Betada as approved vide this office letter No. 13154, D/- 7-12-67, should make over charge to the Secretary of the new Managing Committee on the 7th June, 1968 after-noon and the new Managing Committee will function from June, 8 only after taking over charge from the old Managing Committee."

It is admitted by both parties that the petitioner herein had also been nominated as a member of the Managing Committee by the impugned memo. The case of the petitioner is that the school being a private one, its management and assets vest completely in the Managing Committee which had been previously formed and that the Inspector of Schools had no legal authority to interfere in any way with such management and that the impugned order passed by him reconstituting the Managing Committee is illegal and void. It is further averred that even if under Article 41 of the Orissa Education Code, the Inspector can reconstitute a managing committee, he should first independently, on a consideration of the relevant circumstances of the case, come to a conclusion that reconstitution is necessary, and should thereafter, in consultation with the District Magistrate, proceed with the reconstitution of the committees. But, in the present case, the Inspector has not come to any such independent conclusion about the necessity for reconstitution of the committee and he acted at the behest of the superior authorities.

2. Opposite party No. 3, who, it appears, had been elected as the Secretary of the newly constituted Managing Committee has in his counter stated that the old Managing Committee of which the petitioner was the Secretary, had mismanaged the affairs of the school and a strike of the students followed. Six members of the Managing Committee including the petitioner who was its Secretary resigned. The matter was brought to the notice of the Inspector of Schools, who enquired into the matter personally and after being satisfied that need existed for reconstitution of the Managing Committee requested the District Magistrate, Balasore for suggesting names of persons to be taken as members of the new committee. The District Magistrate thereafter supplied a list of such names and, on the basis thereof, the impugned order was passed by the Inspector, under Article 41 of the Orissa Education Code, It is also pointed out that in the newly formed Managing Committee consisting of nine persons, five were members of the outgoing committee and only four new persons had been taken. It is asserted that the order passed by the Inspector is legal and is also justified in

the circumstances of the case.

3. In a separate counter affidavit filed by the Inspector of Schools (Opposite Party No. 1) he averred that complaints having been received about the mismanagement of the school by the Managing Committee, his predecessor-in-office made the necessary enquiry and on being satisfied that there was necessity for re-constitution of the Managing Committee under Article 41 of the Orissa Education Code, he consulted the District Magistrate regarding the persons who were to be taken as members of the new Managing Committee and that on receipt of necessary reply from the District Magistrate, he (O. P. No. 1) reconstituted the Managing Committee and directed the petitioner who was the Secretary of the outgoing Committee to hand over charge of the records to the new Secretary,

4. A Division Bench of this Court had held in *Chakradhar Samal v. Inspector of Schools, Cuttack*, O. J. C. No. 383 of 1966 and *Gopinath Das v. Inspector of Schools, Balasore and Mayurbhani* O. J. C. No. 427 of 1966 (Ori) that Article 41 of the Education Code has no statutory force and that consequently the Inspector of Schools had no authority to reconstitute the Managing Committee of a private school. If, therefore, the impugned order is one of reconstitution of the Managing Committee of the Betada Panchayat High School, which admittedly is a private school the impugned order has to be struck down as Illegal and without jurisdiction. Obviously realising this position, Sri R. N. Misra, Learned Advocate for the opposite parties contended that the Inspector of Schools had not reconstituted the Managing Committee but that the Managing Committee was reconstituted by the villagers of the village and all that the Inspector did was to accord recognition to an accomplished fact. The documents on record and the averments made by the Inspector of Schools (Opp. Party No. 3) in the counter filed by him completely belie the contention.

Opposite Party No. 3 in paragraphs 12, 53 and 14 of his counter has stated that the Inspector of Schools enquired into the school affairs personally and after being satisfied that need existed for reconstitution of the Managing Committee requested the District Magistrate on April 4, 1963 for suggesting names of members for the new Managing Committee to be formed and on receiving necessary suggestions from the District Magistrate, he passed the impugned order, in compliance with the requirements of the Article 41 of the Orissa Education Code. The Inspector in Paragraphs 4, 12 and 13 of his affidavit has categorically stated that having been satisfied about the necessity for reconstitution of the Committee under Article 41 of the Orissa Education Code, he consulted the District Magistrate for suggestion about the members to be taken in as members of the Managing Committee and on receipt of this information, he reconstituted the Managing Committee. In the face of these unambiguous averments made in the counter affidavits it is idle for Sri Misra to contend that the new Managing Committee had been formed by villagers and it was the Inspector's duty to accord his recognition to the same. We have,

therefore, no manner of doubt in coming to the conclusion that by the impugned order, the Inspector of Schools reconstituted the Managing Committee in the purported exercise of his power under Article 41 of the Orissa Education Code. In view of the decision of this court in the two cases referred to above, we must strike down the impugned order as illegal and without jurisdiction.

5. In the result, we allow this application and quash the order dated 6th June, 1968 passed by the Inspector of Schools, Balasore Circle reconstituting the Managing Committee of Panchayat High School, Betada. In the circumstances of the case, there shall be no order for costs.

Barman, C.J.

6. I agree.