

(1971) 01 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 730 of 1970

Lakshman Mohapatra

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 19-01-1971

Acts Referred:

Orissa Education Act, 1969 — Section 11(1)
Orissa Education Code — Article 41

Citation : AIR 1971 Ori 237

Hon'ble Judges : G.K. Misra, C.J.; A. Misra, J

Bench : Division Bench

Advocate : G.A.R. Dora, for the Appellant; L. Rath and Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—Facts may be stated in brief. By a letter dated 10-6-1970 (Annexure "C") the District Inspector of Schools, Nayagarh (opposite party No. 2) dissolved the managing committee (hereinafter to be referred to as the Committee) of Majhiakhanda M. E. School and a new committee was constituted with opposite party No. 4 as Secretary. The letter runs thus :--

"From

The District Inspector of Schools,
Nayagarh.

To

Shri Lakshman Mohapatra,
ex-Secretary, Majhiakhanda M. E.
School, Majhiakhanda.

Sub:--: Reconstitution of Managing
Committee of the Majhiakhanda M. E.
School.

Sir,

In pursuance of letter No. 2908/Dev/ MD 12-5-1970 of the Collector of Pun District, the managing committee of the Majhiakhanda M. E. School was dissolved and a new managing Committee has been constituted with Shri Chaitanya Das as Secretary. Hence, I request you to hand over charge of records and pass book, etc., of the School that are available with you, to the new Secretary, Shri Chaitanya Das on 17-6-1970.

Yours faithfully,

Sd/ S. Das

10-6-1970

District Inspector of Schools,
Nayagarh."

The letter of the Collector of the District referred to in the Annexure "C" is Annexure "A" to the counter-affidavit which has been addressed to the District Inspector of Schools, Nayagarh. The contents of that letter are as follows:--

"To,

The District Inspector of Schools,
Nayagarh.

Sub:-- Reconstitution of managing
Committee of Majhiakhanda M.E. School.

Rcf: Your Letter No. 1948 dt. 10-4-70.

Madam,

I am directed to intimate that the Collector has been pleased to approve of your suggestion in dissolving the managing committee of Majhiakhanda M. E. School in Ranapur Block in view of the various irregularities pointed out in your letter under reference and to reconstitute a new managing committee for the School.

Yours faithfully,

Sd/- Illegible.

Development Officer,

Puri."

The petitioner's case is that opposite party No. 2 had no power to dissolve the previous committee and to constitute a new committee.

In the counter-affidavit filed on behalf of opposite parties 1 to 3, the following facts have been stated. The committee of Majhiakhanda M. E. School was not functioning properly. It has no regular sitting since March, 1968. There was much discontentment among the public against the Secretary. The matter went to such an extent that the police had to seize the records of the School. There were eight public meetings attended by the members of the Committee and the public accusing the Secretary for misappropriation of public funds. Several petitions were also filed by the public demanding dissolution of the committee. There was complete mismanagement as a result of which the teachers were not given their salary for about two years, that is, from March 1968 to February 1970. It was further averred that the petitioner did not settle up certain irregularities pointed out by the auditor and the grant-in-aid was accordingly stopped. Reliance has been placed on Article 41 of the Orissa Education Code (hereinafter to be referred to as the Code) read with Section 27 of the Orissa Education Act, 1969 (hereinafter to be referred to as the Act) in justification of the order in Annexure "C".

Without determining which version of the story is correct, we would, for the purpose of this writ application, assume that the facts stated in the counter-affidavit are correct and the writ application will be disposed of on that assumption.

2. On behalf of the petitioner Mr. Dora advances two contentions:

(i) Prior to the dissolution of the old committee the petitioner and other members were not given a reasonable opportunity of being heard and there was violation of the principles of natural justice resulting in civil consequences and Annexure "C" is liable to be quashed;

(ii) The District Inspector of Schools had no power or authority to dissolve the Committee,

3. We would take up the second point first. In that connection Section 11 (1), Explanation to the Section, Section 27 (1) and (4) of the Act and Article 41 of the Code are relevant. For convenience, those provisions may be extracted hereunder at one place:

"Section 11 (1) Without prejudice to the provisions contained in any other law for the time being in force, whenever it appears to the Director of Public Instruction that the managing committee or, as the case may be, the governing body of any educational institution has neglected or failed to perform any of the duties imposed by or under this Act or the rules made thereunder, he may, after giving the managing committee or governing body a reasonable opportunity for showing cause against the proposed action and after considering the cause, if any, shown, supersede the managing committee or the governing body.

* * * * Explanation: The expression "Director of Public Instruction" shall mean the Director of Public Instruction (Higher Education) in the case of colleges and the Director of Public Instruction (Schools) in the case of schools.

Section 27 (1) The State Government may, after previous publication, make rules for carrying out all or any of the purposes of this Act.

* * * * (4) Until rules are made under this section, the rules contained in the Orissa Education Code which were in force immediately prior to the coming into force of this Act shall, in so far as they are not inconsistent with the provisions of this Act or of the Constitution, be deemed to be rules made under this Act."

Article 41: Consultation with the Revenue Commissioner or District Magistrate:

"In case of disputes between the managing Committee or advisory committee of a school and the local public, or among the members themselves of the Managing Committee or advisory committee, the Inspector of Schools should obtain the opinion of the District Magistrate before giving his decision. The Inspector of Schools may reconstitute the managing or advisory committee if, after consulting the District Magistrate he considers it necessary to do so."

Annexure C was written on 10-6-1970 and the Act came into force on 16th October 1969. The Act will therefore cover Annexure "C". Section 11 (1) of the Act vests the power of supersession of the Committee or the governing body in the Director of Public Instruction. The conditions precedent to the exercise of jurisdiction are (i) the committee or the governing body of the educational institution has neglected or failed to perform any of the duties imposed by or under the Act, or the rules made thereunder; (ii) if the object is supersession of the committee, it would be given a reasonable opportunity for showing cause against the proposed action.

Admittedly in this case the dissolution of the Committee was not by the Director of Public Instruction, who by virtue of the Explanation to Section 11 is the Director of Public Instruction (Schools) and the question of giving a reasonable opportunity for showing cause does not arise. On the assumption that the averments made in the counter-affidavit are correct, the committee clearly neglected or failed to perform the duties imposed under the Act. It is the duty of the Committee to look after the administration of the school and to see to the payment of salaries of the teachers and not to misappropriate money as alleged. As these things are alleged to have been done by the committee the supersession could be effected only by the Director of Public Instruction. That it was on account of various irregularities that the old committee was dissolved is clear from the contents of Annexure "A" to the counter-affidavit. On this simple argument, Annexure "C" is liable to be quashed as it was issued by the District Inspector of Schools who had no authority u/s 11 (1).

4. Section 27 (1) confers rule-making power on the State Government. No rules have yet been framed. By Sub-section (4) until rules are made under this

Section, the rules contained in the Code which were in force immediately prior to the coming into force of the Act shall, in so far as they are not inconsistent with the provisions of the Act, be deemed to be rules made under the Act. The learned Government Advocate places reliance on Article 41 of the Code and contends that this is a rule which is in force and Annexure "C" was issued in pursuance of this Article.

5. As has already been stated, if any of the provisions in the Code is inconsistent with any of the provisions of the Act, then that provision of the Code would not be treated as a rule. It is, therefore, necessary to examine if Article 41 of the Code is inconsistent with Section, 11 (1) of the Act,

6. Section 11 (1) is very wide in its amplitude. The expression "has neglected or failed to perform any of the duties imposed by or under this Act or the rules made thereunder" is wide enough to include in its sweep the essential features prescribed in Article 41, of the Code. Article 41 refers to disputes between the committee and the local public or amongst the members inter se. In such a case, it is the Inspector of Schools who can supersede the committee in consultation with the District Collector. Disputes between the members, committee or between the members and the public are by themselves of no significance unless they result in the committee neglecting or failing to perform any of the duties imposed under the Act or the rules made thereunder. Take, for instance, a case where the committee is very efficient and honest and discharges its functions properly. The members of the public out of political reasons want to dabble in the affairs of the Committee which the Committee resists. It cannot be said that to such a case Article 41 of the Code would apply. The reason is simple. As the Committee is itself very efficient and honest and carries on administration properly, its removal would be inconsistent with the provisions of Section 11 (1) as it has not neglected or failed to perform any of the duties imposed upon it. So also is the position if there is a dispute inter se amongst the members of the committee provided the President, Secretary and the majority members of the Committee carry on the administrative functions of the school efficiently and honestly. Mere existence of disputes without their resulting in neglect or failure to carry out duties would not give jurisdiction to the Inspector under Article 41. The cases conceived in Article 41 cannot, therefore, be treated as a rule framed under the Act. All actions for supersession of the committee must, therefore, be taken u/s 11 (1) and no action can be taken under Article 41 which shall not be deemed to be a rule made under the Act.

7. On the aforesaid analysis, Annexure "C" is liable to be quashed and the old committee shall be deemed to be continuing as before.

8. In this view of the matter it is not necessary to examine the first contention of Mr. Dora.

9. In the result the writ application succeeds. A writ of certiorari be issued quashing Annexure "C". A writ of mandamus be issued against the opposite

parties not to interfere with the old committee except in accordance with law. In the circumstances, there will be no order as to costs.

A. Misra, J.

10. I agree.