

(1993) 12 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10489 of 1993

Mahadeo Prasad Singh @ and Mahadeo Singh

APPELLANT

Vs

Tilkamanjhi University and Others

RESPONDENT

Date of Decision : 14-12-1993

Acts Referred:

Bihar State Universities Act, 1976 — Section 60(1), 60(4)

Citation : (1994) 1 PLJR 545

Hon'ble Judges : S.K. Singh, J;B.P. Singh, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh, S.T. Mukhopadhyaya, P.N. Shahi, U.S. Prasad Singh and K.K. Thakur, for the Appellant; Tara Kant Jha, B.K. Jha, Sandeep Kumar and S.C. Jha, for the Respondent

Judgement

B.P. Singh, J.—We have heard Counsel for the parties.

2. The Petitioner is aggrieved by the removal of the old Ad-hoc Committee, and the nomination of a new Ad-hoc Committee by the Vice-Chancellor of the University in exercise of powers under Sub-section (4) of Section 60 of the Bihar State Universities Act. It has also been brought to our notice that such Ad-hoc Committee have been continuing since the year 1987. Under Sub-section (4) of Section 60 of the Act the Vice-Chancellor is authorised to constitute an Ad-hoc Committee, but such power is to be exercised only if a regular Governing Body is not constituted in accordance with Sub-section (1) of that Section. The power, therefore, is to make temporary arrangement for the management of the College, when a regularly constituted Governing Body in accordance with Sub-section (1) is not in existence. The power by its very nature cannot be so exercised as to prevent the constitution of a regular Governing Body in accordance with Sub-section (1) of Section 60 of the Act for years together, by appointing successive Ad-hoc Committees. Such exercise of power is a fraud upon the statute and cannot be countenanced. A College must be governed normally by its Governing Body, which is a representative body consisting of

teachers, University representative, officers of the Government, representative of the donors, a political figure etc. Being a representative body it is vested with the power to manage the affairs of the college. Normally, Governing Body of a college must manage the affairs of the college, and appointment of Ad-hoc Committee must be in the nature of an exception in circumstances which justify the nomination of such Ad-hoc Committee. Successive appointment of Ad-hoc Committees without constituting regular Governing Body must be discouraged;

3. Counsel for the Petitioner contends, inter alia, that even the new Ad-hoc Committee is not validly constituted, inasmuch as the Vice-Chancellor has no power to nominate an educationist, who in terms of Sub-section (1)(vii) of Section 60 of the Act must be co-opted by the Governing Body.

4. On the other hand, the stand of the University is that Sub-section (1)(vii) will come into operation only if there is regularly constituted Governing Body, and not otherwise. By its very nature nomination, to an Ad-hoc Committee cannot be governed by the provision relating to constitution of a regular Governing Body, as contained in Sub-section (1) of Section 60 of the Act.

5. It was also submitted that the removal of the Ad-hoc Committee by the Vice-Chancellor is punitive in nature being a measure of punishment and, therefore, it was necessary for the Vice-Chancellor to issue show cause notice before passing, the impugned order. Reliance is placed upon an order of this Court passed in C.W.J.C. No. 5891 of 1991 dated 3rd February, 1992. We found Ourselves in disagreement with the view expressed in the aforesaid order of this Court, and but for the order we propose to pass, we may have considered it necessary to refer this case to a larger Bench. We are, prima facie, of the view that under Sub-section (4) of Section 60 of the Act the members of an Ad-hoc Committee appointed by the Vice-Chancellor hold office during the pleasure of the Vice-Chancellor. A nominated member of the Ad-hoc Committee can be removed at any time. The status of a regularly constituted Governing Body stands on a higher pedestal, because the members having been nominated or elected in accordance with Sub-section (1) of Section 60 have a right to hold office unless they are disqualified to hold that office or are removed for misconduct, mismanagement etc. In such an event justice requires that they must be called upon to show cause before an order of removal from the office held by them is passed.

6. It was then contended that the process of appointing successive Committee since the year 1987 is illegal and there is no valid justification for appointment of successive Ad-hoc Committees. If the existing Ad-hoc Committee were to be removed for any reason, the University should have taken steps to substitute it by a regularly constituted Governing Body in accordance with Sub-section (1) of Section 60. Instead of doing that, Anr. Ad-hoc Committee has been constituted.

7. Lastly it was faintly submitted that the appointment of Commissioner as Vice-Chancellor of the University is illegal. However, having regard to the order which

we wish to pass in this case, we have not considered it necessary to hear counsel on that point. If need be, this question can be raised in an appropriate proceeding.

8. Rather than going into the questions as to whether the Ad-hoc Committee has been duly constituted, and whether the removal of the earlier Ad-hoc Committee is by way of punishment we thought that the normal democratic process must be restored in the College which must manage the affairs of the College. Counsel for the University fairly submitted that the University is itself keen to get a regular Governing Body constituted under Sub-section (1) of Section 60 of the Act. Having heard counsel for the parties, we are of the view that a period of three months should be sufficient to constitute a regular Governing Body under Sub-section (1) of Section 60 of the Act. We, accordingly, direct the Respondent Nos. 1 to 3 to constitute a Governing Body of the College u/s 60(1) of the Act within a period of three months from today.

9. In regard to election of a donor member difficulties sometimes crop. Same is the case in the matter of election of representative of teachers on the Governing Body. Counsel for the Petitioner submits that a list of donors was published in the year 1987-- vide Annexure 7 to which objections were invited, but so far no final order has been passed. We would not express any opinion on this question, but it will be for the authorities concerned to finalise the list of donors and get a representative of the donors elected to the Governing Body. Counsel for the Petitioner submitted that whatever documents are in his custody, which are considered necessary for the purpose of constitution of a regular Governing Body, will be handed over to the Vice-Chancellor, if a request is made by him in this regard, and the Petitioner shall not create any difficulty in the constitution of a regular Governing Body under the Act. We also direct that any person who is in custody of any paper, document, register etc. relating to the College, if called upon by the Vice-Chancellor to produce the same before him, shall produce the same before him, so as to facilitate the constitution of the Governing Body.

10. On the question as to what should be the interim arrangement for the management of the College till a Governing Body is duly constituted, there was considerable divergence of opinion. By order dated 14.10.1993 this Court had passed an interim order to the effect that if the new Ad-hoc Committee had taken over charge of the College, it shall not be disturbed, otherwise the old Committee shall continue to function. While counsel for the Petitioner contends that the old Committee is still continuing. Counsel for the Vice-Chancellor stated that the Ad-hoc Committee, newly appointed had taken over charge. The parties have also produced some materials to justify their respective stands. It is difficult for us to record any categoric finding of fact on this question. It is, however, clear to us that if we do not give clear-cut direction in this regard, there is bound to be a lot of confusion, and in that process the main objective of getting a Governing Body duly constituted may never be achieved. The vehemence, with which the parties before us have sought to support their respective claims is indicative of

their attitudes, and we are afraid that neither the old Committee nor the new Ad-hoc Committee can function because of the opposition by the opposing group. After considerable discussion counsel for the Petitioner as well as for the Respondents agreed that we may nominate or reconstitute the Ad-hoc Committee in whatever way we may like, and that, shall be binding upon the parties. The Petitioner entertained an apprehension that the Commissioner of the Division, who is also the Vice-Chancellor of the University at present, is biased against him. Similarly counsel for the University submitted that if the Petitioner is continued as a member of the Ad-hoc Committee, no progress will be made in the direction of constitution of a regular Governing Body.

11. Having given the matter our most anxious consideration, we have come to the conclusion that the Administrator appointed by order dated 14-10-1993 be discharged, and the Ad-hoc Committee, which shall function for a period of three months from today, or till a regular Governing Body is constituted under the Act, whichever is earlier, shall consist of the following members;

(1) District Magistrate, Bhagalpur President.

(2) Dr. J.S. Dutta Munshi, Retired Professor and Head of Zoology, T.M.B. University.

(3) Professor-in-charge of the College -Secretary.

12. The Committee aforesaid shall look after the management of the College, but shall not take any major decision involving policy matters, nor shall the Committee take any decision, which may cast a heavy financial burden on the College. In other words, the Committee shall only deal with routine matters in course of its management.

13. The aforesaid Committee shall within a month submit to the Vice-Chancellor a list of teachers, duly and validly appointed, who are teaching in the College. The list shall consist of teachers appointed against sanctioned posts after following the due procedure. Those appointed against unsanctioned posts, but with prior Government approval, shall also be included in the list. Those teachers, who are not appointed against sanctioned posts and in whose case no approval has so far been granted by the Government, shall not be included in the list of teachers entitled to vote to select a representative.

14. The aforesaid Committee shall also prepare a list of donors, and forward the same to the Vice-Chancellor within a period of one month from today. The list shall contain the names of donors eligible to vote and elect a representative. The Committee shall also submit supporting documents to show that the persons whose names are included in the list are donors. Such supporting documents shall disclose the amount of donation made, the date on which it was made and other particulars. In case the Vice-Chancellor asks for more particulars, the Committee should supply those particulars without delay.

15. We further direct that no Court subordinate to this Court shall pass any order

of restraint, injunction etc. which has the effect of stalling or delaying the implementation of this order. We, however, give liberty to the parties to apply to this Court in case of difficulty, and in connection with all matters arising from this order. The time schedule fixed under this order must be strictly obeyed, and if any extension becomes necessary, the party concerned must move this Court well in advance seeking such extension of time. We, however, make it clear that we shall not grant any extension unless there are compelling circumstances to justify the extension prayed for.

16. This writ application stands disposed off accordingly.