

(2011) 02 OHC CK 0027

In the Orissa High Court

Case No : Writ Petition (C) No's. 15603 and 19445 of 2010

Mahanta Ramakrushna Dash and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 145
Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 — Rule 21, 21(2), 22, 23, 23(1)
Orissa Education Act, 1969 — Section 5, 5(7), 7, 7(4)

Citation : AIR 2011 Ori 106

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—W.P. (C) No. 15603 of 2010 has been filed by one Mahanta Ramakrushna Dash and another with a prayer to issue a writ in the nature of mandamus to the opposite parties, particularly the opp. party No. 2 i.e. the Regional Director, Orissa, Bhubaneswar, to reconstitute the Governing Body of Japakud Women's College, keeping in view the proposal submitted by the Petitioners within a reasonable time to be stipulated. An alternative prayer has been made to direct the opp. party No. 2 to re-constitute the Governing Body in accordance with the provisions of the Orissa Education Act and the Rules framed thereunder within a stipulated period. W.P. (C) No. 19445 of 2010 has been filed with a prayer to quash the order dated 2-11-2010 passed by the Regional Director, Orissa, Bhubaneswar as at Annexure-7 and issue necessary direction to the opp. parties, more particularly the Regional Director, to approve the Governing Body basing upon the proposal submitted by the Educational Agency as at Annexure 10 signed by Mahanta Ramakrushna Dash, describing him as the Secretary of Japakud Women's College. W.P.(C) No. 11253 of 2010 was listed along with these two writ petitions. Finding that the said case was related to service matter where a contention was raised that Japakud Women's College is a composite college consisting of +2 and +3 Wings and as the said matter is an

assigned matter of the Division Bench, it was directed to place the said matter before the assigned Division Bench of this Court. In these two present writ petitions, a question was raised by the opp. parties with regard to maintainability of the writ petitions at the instance of the Petitioners or in Ors. words with regard to locus standi of the Petitioners to maintain these writ petitions. By order dated 25-1-2011, it was, therefore, directed that these writ petitions shall be heard on the above question.

2. Records were called for from the Government containing the documents pertaining to permission granted for establishment of +3 Wing of the college and constitution and reconstitution of the Governing Body of the said college. The records available with the Government have been produced before this Court. The admitted case is that Japakud Women's College was established in the year, 1987 as a +2 college, after getting permission u/s 5 of the Orissa Education Act, 1969 (hereinafter referred to as "the Act"). It thereafter got recognition by order dated 22-2-1996 for +2 Wing, which in the meantime has been notified as an aided institution with effect from 1-6-1994 in accordance with the Grant-in-aid Order, 1994. With regard to the documents in connection with permission/recognition of Japakud Women's College (+3 Wing), learned Counsel for the State produces written instruction dated 14-2-2011 given by the Deputy Director (NGC-I) that the said file was not traced out in the office in spite of all steps taken, but the copy of the application form obtained from Utkal University, in which the documents relating to the first temporary recognition and first temporary affiliation of the college have been placed before this Court. From the said documents, it is revealed that on an application was made in the prescribed form nomenclatured as Application for Admission to the Privileges of the Utkal University, Vani Vihar, Bhubaneswar-4 by Mahanta Ramakrushna Dash on 30-10-1995 for affiliation of the said college to the Utkal University of the +3 Arts Course for the Session 1994-1995. Copy of the permission letter granted u/s 5(7) of the Act is also available, which is dated 14-11-1994.

3. The Petitioners in W.P.(C) No. 19445 of 2010 claim to be the members of the Educational Agency, which established the said college. The Petitioner No. 1 in W.P.(C) No. 15603 of 2010 claims to be a member of the Educational Agency as well as a donor. After permission and recognition was granted to the said Japakud Women's College in respect of +3 Arts Coupe, the first Governing Body of the said college was constituted as per the provisions of Section 7 of the Act read with Rule 21 of the Orissa Education (Establishment, Recognition and Management of the Private Colleges) Rules, 1991, which was approved by the Director of Higher Education on 16-1-1996. The said Governing Body thus constituted consisted the following members:

1.

Smt. Jayanti Pattnaik (Ex-MP)

(Women Member)

... President

2.

Sri Mahanta Ramakrushna Das

... Secretary

3.

Sri R.K. Behera (MLA Local)

Officio) (SC Reserved)

... Member (Ex-

Officio

4.

Sri Hrusikesh Das

... Member

5.

Sri BijayaKrushna Mishra

... -do-

6.

Sri Prasanna Ku. Mohapatra

... -do-

7.

Sri RasabihariNanda

... -do-

8.

Principal in-charge, Women's College, Japakud (BeenapaniKar)

...-do-

(Ex-Officio)

9.

Sri NabaghanNanda, Lect.

... -do-

(Staff representative)

10.

Puspanjali Panda, Lect.

... -do-

-do-

11.

B.D.O. (local)

?-do-

-do-

12.

Tahasildar (local)

?-do-

-do-

13.

Nominee of CHSE, Orissa

?-do-

4. As per Section 7 (4) of the Act, the tenure of the said Governing Body was for three years from the date of approval by the prescribed authority under Sub-section (2) thereof. After expiry of the period of the said Governing Body, by letter dated 27-2-1999, the Deputy Director (+2 EDN.) addressed to the Sub-Collector (Sadar), who was the President of the Governing Body of +2 Wing of Japakud Women's College, intimating him that the Governing Body for +2 Wing constituted vide order No. 20336 dated 15-5-1998 in which the Sub-Collector was the President, shall be in-charge to manage the affairs of +3 Wing of the said college. Thereafter, on 16-5-2003, the Governing Body of +3 college was reconstituted by the prescribed authority i.e. the Regional Director of Education, consisting of the following members.

1. Sri Chandra Sarathi Behera....PRESIDENT
2. Smt. Satyabhama Kar.... Member-Secretary (Sr. most Teacher of the college)
3. Smt. Kalpana Pati.... Member (Teachers representative)
4. Smt. Rajashree Mishra.... Member (5) Teachers rep.
5. Laxmidhar Jena.... Member (Non-Teaching staff representative)
6. Principal I/c.... Member, Ex. Officio
7. Local M.P.... Member
8. Local M.L.A.... Member

9. D.H.E. Nominee (7).... Member

10. Vice Chancellor Nominee (2).... Member

11. Smt. Rukmani Samal.... Member (SC)

12. Smt. Hurmata Bibi.... Member (Minority Comty.)

13. Sankarsan Mohapatra.... Member (Interested in the field of Min.)

14. Smt. Narmada Mishra..... Women Member

15. Smt. Nayana Behera.... Women Member

5. After expiry of the term of the said Governing Body, again the Governing Body was reconstituted on 2-6-2006 consisting of the following members:

1. Smt. Narmada Mishra - President

2. Smt. Satyabhama Kar - Member-Secretary (Sr. most teacher)

3. Miss Kalpana Pati - Member (teacher's representative)

4. Miss Anita Behera -- Member (II) Teacher's representative

5. Sri Laxmidhar Jena -- Member (Non-teaching staff representative)

6. Principal I/C. -- Member (Ex-officio) 7; Local M.L.A./Nominee -- Member

8. Local M.P./Nominee -- Member

9. V.C. Nominee (W) - Member

10. D.H.E. Nominee (W) - Member

11. Shii Fakira Charan Behera -- Member (SC/ST)

12. Sri Hurmat Bibi -- Member (Minority Compty.)

13. Sri Biswamohan kar - Member (Interested in the field of education)

14. Smt. Nayana Behera - Women Member

15. Smt. Rukmani Samal - Women Member

6. It is claimed by the Petitioners that the Governing Body reconstituted in 2006 did not send any proposal as per Rule 23 of the Rules for reconstitution of the Governing Body before ninety days of its expiry and the Regional Director by the impugned order dated 2-11-2010 has approved the so called proposal of the outgoing Governing Body. It is the case of the Petitioners in both the writ petitions that the Educational Agency gave a proposal for reconstitution of the Governing Body as no proposal was sent by the outgoing Governing Body as per rules and it was incumbent upon the Regional Director to accept the said proposal submitted by the Educational Agency. The said proposal has been made Annexure-10 in W.P.(C) No. 19445 of 2010, which is signed by Mahanta

Ramakrushna Dash as the Secretary of Japakud Women's College. It appears from Annexure-11 annexed to the W.P. (C) No. 19445 of 2010 that the said names were proposed by Mahanta Ramakrushna Dash as per the resolution adopted in a public meeting, conveyed at the instance of the said Mahanta Ramakrushna Dash, as the Secretary and founder of the said college. Various affidavits and counter affidavits have been filed by the respective parties in both the writ petitions. The Petitioners admittedly are not members of the outgoing Governing Body.

7. Mr. B. Routray, learned senior counsel appearing for the Petitioners in W.R(C) No. 15603 of 2010, Mr. K.K. Swain, learned Counsel appearing for the Petitioners in W.P.(C) No. 19445 of 2010 and Mr. J. Pattnaik, learned senior counsel appearing for the opp. parties 17 and 18 in W.R(C) No. 19445 of 2010 vehemently urged that even though the Petitioners are not members of the outgoing Governing Body, they being the members of the Educational Agency, which established the college as well as the public interested in the field of the education and Mahanta Ramakrushna Dash being the donor, they have a right to raise objection to the illegal reconstitution of the Governing Body by the prescribed authority as well as they have a right to send their proposal for reconstitution of the Governing Body which was submitted to the Regional Director, to be considered for reconstitution of the said Governing Body.

8. Mr. R.K. Rath, Mr. J.K. Rath and Mr. S. Mohanty, learned senior counsels appearing for the opp. parties vehemently opposing the contentions raised by the Petitioners, submitted that the Petitioners neither have any statutory nor any legal right to be enforced in a writ petition under Article 226 of the Constitution nor any mandamus can be issued to the Regional director to consider the proposal submitted by the Petitioners with regard to reconstitution of the Governing Body of Japakud Women's College (+3 Wing).

9. To decide the question as to whether the writ petitions are maintainable at the behest of the Petitioners or as to whether they have any locus standi to maintain the writ petitions, it is necessary to refer to Rules 21 and 23 of the Rules, which are as follows:

21. Constitution of the Governing Body-

(1) Soon after a College is established in accordance with these Rules the Educational Agency which has been permitted to establish the college shall constitute a Governing Body for managing the affairs of the college as required u/s 7 of the Act.

(2) The Governing Body shall consist of fifteen members as follows:

(a) One person shall be nominated by the concerned Educational Agency; as the President (b)(i) two members from the teaching staff of the College duly elected by them out of whom one shall be a woman and in the event no woman member is available, the membership shall remain vacant till a woman is posted as a

teaching staff;

- (ii) One member from the non-teaching staff of the College duly elected by them.
- (c) Local member of Legislative Assembly or his/her nominee;
- (d) Local Member of Parliament or his/her nominee;
- (e) One person to be nominated by the Vice-Chancellor of the University having jurisdiction over the College who shall be a woman;
- (f) One person to be nominated by the Director, Higher Education who shall be a woman;
- (g) Five persons to be nominated by the concerned Educational Agency out of whom one shall be donor who donates more than fifty thousand rupees or in absence of such a donor, a person who is interested in the field of Education, one shall belong to Scheduled Castes or Scheduled Tribes community, one shall belong to minority community and two shall be women; and
- (h) The Principal or the teacher in charge of the Principal of the College shall be an ex-officio member;
- (i) Senior most teacher of the College shall be the Member-Secretary to the Governing Body.

23. Reconstitution of the Governing Body-

(1) Not less than ninety days prior to the date of expiry of the term of a Governing Body, a resolution shall be passed in a meeting of the Governing Body nominating five members in accordance with Clause (g) of Sub-rule (2) of Rule 21 from among themselves or Ors. persons in the local area interested in the field of education to be members of the Governing Body to succeed it on the expiry of its terms and to be its President and Secretary:

Provided that where a Charitable Trust had established the College, the Trust shall nominate the above persons to be members, President and Secretary of the Governing Body.

Provided further that if the outgoing Governing Body or the Charitable Trust does not pass a resolution nominating, members, the Director shall be competent to reconstitute the Governing Body:

Provided also that-

- (i) no person shall be the Secretary for more than two terms; and;
 - (ii) no person shall be a member of the Governing Body for more than two consecutive terms except of ex officio members, donors and those nominated by a Charitable Trust in case of such a Trust established the College.
- (2) The outgoing President shall furnish the Director for his approval the names

and the details granting the proposed reconstruction of the Governing Body including the name of the representative to be elected by the teachers (the name of one representative duly elected from non-teaching staff) and the name of the Principal of the College along with the names of the persons to be the President and the Secretary of the Governing Body.

(3) The Director shall be competent to substitute any name in the proposed Governing Body to bring it in conformity with the provision of these Rules or with a view to improve the efficiency of the management of the College;

Provided that the Director shall consult the outgoing Governing Body in the matter before making such substitutions.

10. A reading of the above rules clearly shows that the first Governing Body after establishment of the college is to be formed by the Educational Agency, which has been permitted to establish the college and the Governing Body shall consist of the members as mentioned in Sub-rule (2) of Rule 21. The details of the Governing Body thus formed for managing the affairs of the college as required u/s 7 of the Act shall be furnished along with the application for grant of recognition in Form-III for approval of the Director which shall be approved as per Rule 22 of the Rules. Rule 23 prescribes that the outgoing Governing Body has to take a resolution in the meeting of the Governing Body nominating five members in accordance with Clause (g) of Sub-rule (2) of Rule 21 from among themselves or Ors. persons in the local area interested in the field of education, to be members of the Governing Body to succeed it on the expiry of its term. (Emphasis Supplied). Thus, it is clear from the facts of this case that after the first Governing Body constituted by the Educational Agency spent its force, no resolution was passed in the meeting of the Governing Body nominating its successors as per Rule 23 (i) for which in accordance with the second proviso to the said Rule 23(i), the Sub-Collector was directed that the Governing Body of +2 Wing of which he was the President shall be in-charge to manage the affairs of +3 Wing of the said college until further orders. Subsequently, the Governing Body was reconstituted as per the said proviso in the year, 2003 and as per the proposal of the said Governing Body, again the Governing Body was reconstituted in the year, 2006. The Petitioners have never objected to such reconstitution of the Governing Body from the year, 2003. Thus, the scheme of the Rules shows that after the first constitution of the Governing Body by the Educational Agency, there is no further right for the said Educational Agency with regard to participating in any meeting for giving a proposal for reconstitution of the Governing Body.

11. Learned senior counsels appearing for the opp. parties contended that the relief sought for by the Petitioners is for issuance of a writ of mandamus to the Regional Director to accept the proposal for reconstitution of the Governing Body submitted by Mahanta Ramakrushna Dash as the founder of the said college as per the resolution taken in the public meeting. As neither the Act nor the Rules provided any right to be exercised by the founder member or the general public

of the locality with regard to reconstitution of the Governing Body of the college, the Petitioners cannot maintain the writ petitions.

12. Abundant authorities are there in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The Supreme Court in the case of *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, , held that the chief function of a writ is to compel performance of public duties prescribed by the statute and to keep subordinate tribunals and officers exercising public functions within the limit of that jurisdiction. It further laid down that for mandamus to be issued to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

(Emphasis supplied)

13. Mr. Swain, learned Counsel appearing for the Petitioners in W.P (C) No. 19445 of 2010 relying upon the decision in the case of *Action Group Res. In Action Group Res. in Envrn. and Education Development Society and Others Vs. Sakky Bai and Others*, , contended that the Supreme Court in the said case has held that in the facts of the said case, the Respondent before the Supreme Court, who are the inhabitants of the locality where the school is running, have a right to seek for a mandamus from the Court to the appropriate authority to see that the school must run in the building in question until shifting is made in accordance with law. Relying upon the said decision, Mr. Swain vehemently urged that since the college is a public institution even the general public of the locality have a right to bring before the Court any illegality committed by the authorities in reconstitution of the Governing Body of the college and the Educational Agency which established the college even has a better right to agitate the same. In the aforesaid case of *Action Group* (supra), the dispute was with regard to illegal shifting of the school from one place to another where even a proceeding u/s 145, Code of Criminal Procedure.. was initiated. Functioning of an educational institution on a particular place is definitely linked with the interest of the inhabitants of the locality. However, under the Orissa Education Act, the inhabitants of the locality or the general public are no way connected with the formation/reconstitution of the Governing Body or a Managing Committee of an educational institution functioning in the area. The Governing Body of the college is to be constituted strictly in accordance with law and the Petitioners having no role to play in reconstitution of the Governing Body have no locus standi to challenge the said reconstitution and also have no statutory right to seek a writ of mandamus for accepting the proposal submitted by them for reconstitution of the Governing Body of Japakud Women's College.

14. While coming to the above conclusion, I also took note of the decision in the case of *Ghulam Qadir Vs. Special Tribunal and Others*, relying upon which Mr. J.

Pattnaik, learned senior counsel submitted that it is not required for the Petitioners to establish the infringement of legal right or statutory right to maintain a writ petition seeking issuance of a mandamus. In the said case, the Supreme Court held that there is no dispute regarding the legal proposition that the rights under Article 226 can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. The Ors. exception to the general rule is the filing of the writ petition in public interest and the existence of the legal right of the Petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under Article 226. No doubt, the Supreme Court held that the orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in India and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper technical grounds. While holding thus, however, the Supreme Court in the said decision laid down that if a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In Ors. words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having locus standi.

(Emphasis supplied)

15. Even applying the above ratio, I find that the Petitioners are incompetent to maintain the writ petitions and seek for relief which has already been enumerated above. While, therefore, finding no merit in these writ petitions and holding that the writ petitions are not maintainable at the behest of the Petitioners, I took note of the instructions received by the learned Counsel for the State that the Regional Director has instructed him that the Governing Body now approved, which is the order impugned in these writ petitions, i.e. Annexure-7 dated 2-11-2010 contains the names of Smt. Narmada Mishra, President, Hurmata Bibi, Member (Minority Community), Smt. Nayana Behera (Women Member) and Smt. Rukmani Samal (Women Member), who were also members of the Governing Body, which was reconstituted in the year, 2003 as well as 2006. Hence, I find that as per Clause (2) of the 3rd proviso to Rule 23(1), the aforesaid four persons could not have been included in the Governing Body as they were members of the said Governing Body for two consecutive terms and they were not Ex-Officio members. In such event, the writ petitions are disposed of as not maintainable, but with the direction that the Regional Director shall take appropriate steps as per Sub-rule (3) of Rule 23 to substitute the aforesaid four persons in the reconstituted Governing Body, which was approved by order dated 2-11-2010 in consultation with the outgoing Governing Body as per proviso to Sub-rule (3) of Rule 23.

16. The writ petitions are, accordingly, disposed of. The interim order passed in

W.R (C) No. 19445 of 2010 on 12-11-2010 stands vacated.