

(1970) 05 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jur. Case No. 580 of 1970

Managing Committee, T.K. Ghosh Academy and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-05-1970

Acts Referred:

Bihar High Schools (Constitution, Powers and Functions of Managing Committee)
Rules, 1964 — Rule 12, 39

Bihar High Schools (Control and Regulation of Administration) Act, 1960 — Section 8(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1971 Patna 257

Hon'ble Judges : B.D. Singh, J

Bench : Single Bench

Advocate : Prabha Shankar Misra, Jiwan Shankar Srivastava and Rajendra Prasad Singh, for the Appellant; Shreenath Singh, Standing Counsel (for No. 4), Jagdish Pandey and Vijoy Bahadur Singh, (for No. 5), for the Respondent

Final Decision : Allowed

Judgement

B.D. Singh, J.—In this application under Articles 226 and 227 of the Constitution of India, the Managing Committee of T. K. Ghosh Academy, Patna, which is petitioner No. 1, and Dr. Deven-dra Prasad, the Secretary of the ad hoc Managing Committee of the said institution, who is petitioner No. 2, have obtained a rule from this Court on their prayer for issuance of rule nisi on the respondents to show cause as to why a writ in the nature of certiorari be not issued, quashing the order of the District Education Officer dated the 20th February, 1970 contained in Annexure "7" of the application which was alleged to be based on the instruction dated the 27th November, 1964, given by the Director of Public Instruction as contained in Annexure "8" to the said application. In this application, the State of Bihar has been impleaded as respondent No. 1, the Director of Public Instruction, Bihar, as respondent No. 2, the Secretary, Board of Secondary Education, Bihar, as respondent No. 3, the District Education Officer, Patna, as respondent No. 4 and Ram Nivas Pandey, the Headmaster, under

suspension, of the said institution as respondent No. 5. After notice was served on the respondents, cause was shown on behalf of respondents 4 and 5 separately to which I will refer in due course.

2. The case as made out by petitioner No. 1 in the application is that the Managing Committee of the said institution was constituted under Rule 39 of the Bihar High Schools (Constitution, Powers and Functions of Managing Committee) Rules, 1964, as modified in 1967 (hereinafter referred to as "the 1964 Rules") and that the said ad hoc committee is exercising and performing the functions powers and duties of the Managing Committee. It is stated therein that the Managing Committee according to the 1964 Rules is not yet fully constituted.

According to the petitioners, several reports of misconduct, inefficiency, insubordination, indiscipline, and negligence of duty of respondent No. 5 were received by the Managing Committee, and, in spite of the opportunities given to him, he failed to give a satisfactory explanation and improve his conduct and efficiency. The allegations against respondent No. 5 constituted very serious charges including one of defalcation of public money belonging to the said school and dereliction of duties by the Headmaster. Therefore, the Managing Committee at a meeting held on the 7th December, 1969, directed the Secretary, petitioner No. 2, to communicate the charges to respondent No. 5 and to ask from him specific comments on each specific allegation against respondent No. 5. On the 31st January, 1970, petitioner No. 2 sent his observations regarding the said allegations to respondent No. 5. A copy of those observations which is on the record is marked as Annexure "1".

Subsequently, a meeting of the Managing Committee convened on the 8th February, 1970, considered the written report of petitioner No. 2 in connection with the allegations against respondent No. 5 and in view of the gravity of the charges and exigencies of the situation as envisaged in the report of petitioner No. 2, the Committee felt that it was not proper to permit the Headmaster (respondent No. 5) to continue in office and, accordingly, the Committee decided to suspend him with effect from the 9th February, 1970. The Committee in the meeting further resolved to serve a memo of charges upon respondent No. 5 by the 11th February, 1970, stating therein the grounds on which action was proposed to be taken against him and giving him an opportunity to submit his explanation within a fortnight after the receipt of the memo, and for showing cause as to why he be not dismissed or discharged from service. A copy of the resolution dated the 8th February, 1970 has been marked as Annexure "2" to the application.

In the said meeting, respondent No. 5 was directed to hand over charge of his office to Sri R. Y. Shukla, Assistant Headmaster of the School; and, Mr. Shukla was directed to take charge of the office from respondent No. 5. On the 9th February, 1970, the Secretary served the memo of suspension on respondent No. 5 and directed him to make over charge of the office to Mr. Shukla. A copy of the letter of the Secretary intimating respondent No. 5 that he has been suspended

and that he has to hand over charge to Mr. Shukla is marked Annexure "3".

It is stated that later on, the peon of the school served Annexure "3" upon respondent No. 5, who received the same, but refused to sign the acknowledgment, in the peon book. The peon submitted his report to that effect to the Secretary. The peon's report has been marked as Annexure "4" to the application. In the morning of the 9th February, 1970, when the school assembled, Mr. Shukla assumed the office of respondent No. 5, who, however, did not accept the order of suspension, and addressed a note to Mr. Shukla stating that he was going to discuss some important matters concerning the school with the authorities of the Education Department, and that in his absence he (Mr. Shukla) should look after the classes. Shri Shukla, however, assumed charge of the office of respondent No. 5 against whom the order of suspension was effected and reported the matter to the Secretary. A copy of the memorandum assuming charge by Mr. Shukla is marked as Annexure "5".

Respondent No. 5, subsequently sent a telegram on the same date to petitioner No. 2 mentioning that respondent No. 5 was ill and. he prayed for ten days" leave, On the 10th February, 1970, the memo of charges against respondent No. 5 was sent to him through the peon, who went to his residence several times from the morning hours till late in the night, and the peon went, on a number of occasions, on the 11th February. 1970, as well; but respondent No. 5 was not available at his residence, and, therefore, the peon returned the memo of charges to the Secretary. On that very day, that is, 11th February, 1970, the memo of charges against respondent No. 5 was. however, sent by registered post with acknowledgment due which was received by respondent No- 5 on the 13th February. 1970. A copy of the said memo of charges has been marked as Annexure "6" to the application.

On the 26th February, 1970 petitioner No. 2 received a letter dated the 20th February, 1970 from Shrimati Shrijnti Upadhyay, District Education Officer (respondent No. 4). A copy of the said letter has been marked as Annexure "7" to the application, which contains the impugned order. In the said letter, she referred to another letter of the Director of Public Instruction, Bihar, dated the 27th November, 1964; a copy whereof has been marked as Annexure "8" to the application. In her letter (Annexure "7"), she stated that no order of suspension or termination of the service of respondent No. 5 could be made by the Managing Committee or: the eve of its reconstitution or during the process of constitution, and, she further observed that the memo of charges was not annexed to the memo of suspension of respondent No. 5; a copy whereof was sent to her by the school authority, and, therefore, it was not clear as to what were the allegations leading to the suspension of respondent No. 5. In the said letter, she also communicated to the Secretary her order cancelling the order of suspension passed by the Managing Committee, and to treat respondent No. 5 as continuing in service, and to allow him to work as usual.

The letter dated the 27th November, 1964, a reference of which is made in

Annexure "7", contains instructions of the Director of Public Instruction, Bihar; the relevant portion of which is to be found in paragraph 2 of the said letter which reads:

"Instances have come to my notice In which the Managing Committee has decided to discharge or dismiss the Headmaster at a time, when the Managing Committee was to be reconstituted under the rules mentioned above. Such action on the part of the Managing Committee prevents the Headmaster from playing his proper role in the reconstitution of the Managing Committee to which he is entitled under the rules. It is necessary (that) the Headmaster should be present in different meetings in connection with the reconstitution of the Managing Committee. While the power of the Managing Committee to suspend, discharge and dismiss the Headmaster cannot be questioned, the (sic) Managing Committee affects the process of reconstitution. It is necessary that the Managing Committee should exercise utmost care in suspending, discharging or dismissing a Headmaster (sic) also point out that no Headmaster should be discharged or dismissed save and except on ground of proved inefficiency, conduct involving moral turpitude or gross negligence of duty etc., vide Rule 15 of the rules published with Notification No. 5172, dated 7-9-55. You are, therefore, requested to be very alert and to impress on the Managing Committee, where necessary, the desirability of exercising the power to suspend, discharge and dismiss the Headmaster with utmost care and caution until Managing Committees in all schools are reconstituted."

3. Mr. Prabha Shankar Misra, learned counsel appearing on behalf of the petitioner, has assailed the impugned order contained in Annexure "7", and contended that the District Education Officer (respondent No. 4} had no jurisdiction or power to interfere with the matter of suspension of respondent No. 5 as resolved by the ad hoc Managing Committee of the said institution. He drew my attention to the notification No. II/R4-01/ 55-E-5172, dated 7th September 1955. issued under Notification No. II/B1-01/ 59-E.-1050, dated the 21st March, 1959, of the Education Department, which has the force of a statute as provided u/s 8(2) of the Bihar High Schools (Control and Regulation of Administration) Act, 1960 (Bihar Act XIII of 1960), hereinafter referred to as "the Act", Clause (2) of Section 8 reads as follows:

"Until the State Government makes rules under this section the provisions contained in the Bihar Education Code, 7th Edition, as amended from time to time, and all resolutions and orders of the State Government or of the Director of Public Instructions, Bihar, a collection of which was published in the extraordinary issue of the Bihar Gazette, of the 23rd March, 1959 and which are in force on the date of commencement of this Act. shall, in so far as they are not inconsistent with the provisions of this Act, and the provisions of the Constitution of India relating to schools established and administered by Anglo-Indians and minorities based on religion or language, be deemed to be the rules made under this Act for the purposes of this Act."

Learned counsel appearing on behalf of the respondents has not challenged that it has not the force of a statute, as it is well settled by now that the instructions as contained in the notification of the Education Department dated the 7th September, 1959, have all the force of statute (vide an unreported decision of this Court in *Ajit Kumar Mukherjee v. The President, Board of Secondary Education, Bihar, Patna, Misc. Judl. Case No. 899 of 1961 (Pat.)*, disposed of on the 14th August, 1964, at page 14). It has been pointed out however, by Mr. Shreenath Singh, learned Standing Counsel, on behalf of respondent No. 4 that even the 8th edition of the Education Code, as amended from time to time, has been held to have statutory force (vide *Baleshwar Prasad v. Director of Public Instruction*, 1967 BLJR 476).

In my opinion, it appears that the attention of their Lordships was not drawn to the specific provision contained in Section 8(2) of the Act wherein the provisions contained in the Education Code, 7th Edition, and the instructions as published in the notification, mentioned in the section, only have the force of law. In the unreported decision of the then C. J, and Untwalia, J., referred to above, at pages 14 and 15, it has been clearly pointed out that the 8th edition of the Education Code had not got the force of law, as their Lordships detected some variance between the rules found in the 7th edition and the 8th edition. The variance, referred to, was not referable to any authoritative rules framed by the State Government or any other authority. However, in the instant case, on the safe side, I have referred to the instruction contained in the notification dated the 21st March, 1959 which is specifically mentioned in Section 8(2) of the Act, quoted above.

In that view of the matter, Rule 12 of the said notification dated the 7th September, 1955, reads as under:

"The Managing Committee may impose the following punishment on any member of the staff including those on probation after having finally considered his explanation and the charges levelled against him in writing :--

x x x x x".

The said rule also contains two notes which are relevant for the decision in this case. Hence, it will be convenient to quote the relevant portions of the said note as well:

"(1) Proceedings are to be started against teachers concerned by the Secretary on the report of the Headmaster, or by the President, on the report of the Secretary, or by the President himself, or by the Managing Committee as a whole. Ordinarily the Managing Committee as a whole has the power to suspend the teacher but in cases of urgency, the Secretary in consultation with the President may suspend a teacher, but this must be approved by the Managing Committee within a fortnight.....".

Note (2) of the said rule provides that

"During the period of suspension the teacher shall be allowed to draw half his salary plus dearness allowance and upon exoneration, the balance shall be paid to him".

The above notes, as mentioned earlier, have statutory force as it forms part of the notification of the Education Department dated the 21st March, 1959. In view of the provisions of Section 8(2) of the Act. it is difficult to hold that the same is devoid of any statutory force. According to the learned counsel, therefore, it was the Managing Committee alone, which had power to suspend respondent No. 5.

The instruction contained in Annexure "8". the relevant portion of which has already been quoted, clearly says that the Managing Committee has power to suspend, discharge or dismiss the Headmaster, and that power cannot be questioned. The said letter however contained only a sort of instruction that during the transitional period, particularly when a newly constituted Managing Committee is expected to take charge, the ad hoc committee should not suspend, discharge or dismiss a Headmaster on flimsy grounds. It is made clear therein that if the charges against the Headmaster are serious, like, proved inefficiency, conduct involving moral, turpitude or gross negligence of duty, etc., the said ad hoc committee has such power to suspend. It has been contended that in the instant case, respondent No. 5 was not suspended on flimsy grounds.

Besides, it is urged on behalf of the petitioners that the direction as contained in Annexure "8" in terms of Section 8 of the Act, has not got statutory force; but it is merely a direction. In my judgment, this contention is well founded. It can at best be called a direction, but it has no statutory force. Learned counsel then referred to the counter-affidavit dated the 17th April, 1970, which has been filed on behalf of respondent No. 4, wherein in paragraph 12 it has, inter alia, been stated that respondent No. 5 had sought relief from the Education Department, and that on the report of the Sub-divisional Education Officer, Patna, Sadar, the District Education Officer, that is, respondent No. 4, had advised the Secretary, that is, petitioner No. 2, by her letter dated the 20th February, 1970 (Annexure "7") to allow respondent No. 5 to continue as the Headmaster. Learned counsel, relying on this statement, made in the counter-affidavit. asserts that she herself has interpreted her order contained in Annexure "7" as mere "advice". According to him, in view of the provisions, referred to above, she could not have passed an order interfering with the suspension order; and, as such, that may be a mere advice.

4. Learned Counsel for the petitioners further drew my attention to the 1964 Rules made by the Governor of Bihar in exercise of the powers conferred by Sub-section (3) of Section 8 of the Act. as modified by the State Legislature under Sub-section (3) of Section 8 of the Act. The said Rules have been amended by the notification of the Education Department dated the 24th April, 1967. Chapter VIII of the said Rules contains miscellaneous and transitory provisions.

Rule 37 provides that "For each school a Managing Committee shall be

constituted in accordance with these rules, within a period of two years from the date of publication of these rules in the official Gazette". Rule 38 provides that "The Managing Committee functioning in Schools on the date on which the Bihar High Schools (Constitution, Powers and Functions of Managing Committee) Rules, 1964, as modified by the State Legislature, are published in the Official Gazette shall cease to function, after a period of two years from the date of publication of the said rules or the day the Managing Committee is constituted under these rules". Rule 39 provides that "where a Managing Committee is not constituted, in accordance with these rules, within the period specified in Rule 37, the powers and duties of the Managing Committee, President and Secretary shall, until its constitution in accordance therewith be exercised and performed by such p_erson as may be appointed by the President of the Board of Secondary Education for the purpose."

5. It may be noted that petitioner No. 2 is one of the members of the ad hoc committee as appointed under Rule 39. Professor Devendra Nath Sharma is another member of the said ad hoc committee who is appointed as President of the committee, and Dr. A. S. Yadav is yet another member of the said committee appointed under Rule 39. Before them, there were some other members appointed by the President under Rule 39; but, at present only these three persons are the members of the ad hoc committee appointed under Rule 39.

6. Learned counsel for the petitioners urged that there is no difference between the powers of the members of the ad hoc committee, and the powers which are exercisable under the rules by the duly constituted Managing Committee. Both types of the committee in terms of the rules have similar and identical powers. He submitted that this is also borne out by a letter dated the 10th July, 1966, sent by the Secretary of the Board of Secondary Education to the then Secretary of the ad hoc Managing Committee, Shri A. F. Haider. In that letter, it is clearly stated that the members of the ad hoc Committee have similar powers as are to be exercised by a duly constituted Managing Committee. That letter is Annexure "18" to the reply filed by the petitioners dated the 24th April, 1970, to the counter-affidavit filed by respondent No. 4.

7. Mr. Shreenath Singh, learned Standing Counsel, appearing on behalf of respondent No. 4, fairly conceded that the ad hoc committee has similar powers; but he supported the order passed by respondent No. 4 contained in Annexure "7". He, no doubt, submitted that the ad hoc committee had powers to suspend respondent No. 5, but the background in which the said suspension order by the ad hoc committee has been passed should be taken note of by this Court; and, in that view of the matter alone the application filed by the petitioners should be rejected in the ends of justice.

He drew my attention to the various allegations and counter-allegations made by respondent No. 5 in his counter-affidavit against the members of the present ad hoc committee. According to him it is clear that respondent No. 5 was not pulling on well with the members and that they were annoyed with him. Although in the

past those very members agreed to the confirmation and promotion of respondent No. 5 and then there was no allegation against him; but suddenly in the month of January 1970 they changed their attitude against respondent No. 5. That clearly indicated that the action taken by the ad hoc committee was mala fide, and that in view of the matter, the District Education Officer in her supervisory capacity under her administrative power asked the ad hoc committee to stay its hands and reinstate respondent No. 5, particularly when a full-fledged Managing Committee was about to be constituted.

He drew my attention to the fact that the ad hoc committee was initially constituted in 1965. He submitted that due to the hindrance or dilatory tactics adopted by the present ad hoc committee, a full-fledged Managing Committee according to the rules has not yet come into operation. My attention was drawn by learned counsel appearing for respondents 4 and 5 to a Bench decision of this Court in *Lal Mohan Sah v. State of Bihar* 5965 BLJR 844, wherein their Lordships had occasion to consider rules 37, 38 and 39 of the 1934 Rules, referred to above. In their Lordships' view, it was essential that a duly constituted Managing Committee should take charge as soon as possible in the interest of the education. Therefore, their Lordships in paragraph 21 at page 857 observed that

"it should be made clear that the authorities concerned should take prompt steps to constitute a Managing Committee as soon as possible and should not prolong the life of the ad hoc committee beyond the period absolutely necessary for such, constitution."

On the other hand, Mr. Prabha Shankar Misra, appearing on behalf of the petitioners, referred to Annexure "20" filed along with the reply filed by the petitioners on the 24th April, 1970 to the counter-affidavit filed by respondent No. 4. This annexure is a letter dated the 23rd February, 1970, from the Secretary, Board of Secondary Education, to the Secretary of the ad hoc Managing Committee of the school, by which it was intimated that the Deputy Inspector of Schools Patna Sadar, had been appointed as Government nominee to the Managing Committee to be constituted according to Clause (4) of Rule 3 of the 1964 Rules. He submitted that there was some confusion and, therefore, certain enquiries were made regarding the Government nomination under the said rule, and, ultimately, by the letter dated the 23rd February, 1970 {Annexure "20") it was finally communicated as to the Government nominee, so made. In that view of the matter, he contended that the ad hoc committee was in no way standing in the way of an early constitution of a full-fledged Managing Committee.

7a. I have no doubt on examination of the various statements contained in the different affidavits filed on behalf of the petitioners as well as on behalf of respondent, No. 5, that there is some misunderstanding between the Headmaster and the present members of the ad hoc committee. But, in this application, I do not wish to express my opinion one way or the other, as it would cause prejudice to the parties concerned, particularly when respondent No. 5 has internal remedy by filing an appeal if he is discharged or dismissed. Besides this,

from the records it appears that an enquiry against Mm is proceeding and is pending. In that view of the matter, I advisedly refrain myself from expressing my view over the matter. In the present application, the only thing to be decided by this Court is whether respondent No. 4, had power to interfere with the order of suspension, which has been passed by the ad hoc committee. After considering the various rules, and provisions in this respect as also the different articles of the Education Code, I am of the view that she had no power to interfere with the order of suspension which, in my opinion, cannot be sustained. In that view of the matter, the application filed by the petitioners has got to be allowed.

It may, however, be noted that on behalf of respondent No. 5 all the allegations which were made against him by the petitioners, have been denied in the various counter-affidavits. The question as to whether the allegations were correct or not will be considered by the proper forum at the appropriate time.

8. However, it was contended on behalf of the respondents that the application filed by the petitioners was not maintainable. My attention was drawn to the statement showing the powers delegated to the Regional Deputy Director of Education/District Education Officer contained in a Guide Book to Important Orders and Circulars (Second Edition). 1969, at page 152. At page 173, in Item No. 56, in respect of power to hear and dispose of appeals, it is mentioned therein that the Regional Deputy Director of Education is the authority to whom powers have been delegated to hear and dispose of all appeals against the orders of the officers immediately subordinate to him. It is submitted on behalf of the respondents that the District Education Officer is subordinate to the Regional Deputy Director of Education, and, therefore, the order which she had passed as contained in Annexure "7" was appealable before the Regional Deputy Director of Education and. as such, the petitioners could have filed an appeal before him against the impugned order.

Mr. Jagdish Pandey also referred to the general instructions contained in Statement II, where it is mentioned in Clause (1) that

"A higher authority has all the powers of a lower authority and further may, with or without appeals, modify or reverse any orders passed by a lower authority in a matter primarily within the competence of the lower authority, unless under any law the orders of the lower authority are final".

In my view unless it is shown that such kind of instructions are covered under the provisions contained in Section 8 of the Act, it cannot be assumed that it has got statutory force. Besides, it is well established that in appropriate cases, a writ may be issued by a High Court, even where an alternative remedy exists, which the petitioner has not availed of. The rule of exhaustion of statutory remedies, before a writ is granted, is a rule of self-imposed limitation, rule of policy, and discretion, rather than a rule of law, and the court may therefore in exceptional cases issue a writ, such as, a writ of certiorari, notwithstanding the

fact that the statutory remedies have not been exhausted. There are at least two well-recognised doctrines with regard to the exhaustion of statutory remedies; namely, (a) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved, thereby to move the High Court under Article 226, for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course; and (b) where the impugned order has been made in violation of the principles of natural justice (vide Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar,).

9. In a Full Bench decision of Nagpur High Court in AIR 1955 49 (Nagpur) , Mudholkar, J. (as he then was) observed in paragraph 23 at page 58,

"No doubt, this Court has held in several cases that where another remedy which is equally convenient is open to a person, it would not ordinarily interfere, But neither this Court nor the Supreme Court has held that the existence of another remedy is, in every case, a bar to the exercise of the powers of a High Court under Article 226. On the other hand, the view is well settled that there is no such bar and that the court can interfere if the circumstances of the case demand interference."

10. In Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another, , their Lordships held at p. 1403 in paragraph 8:

"The power and jurisdiction of the High Court under Article 226 of the Constitution has been the subject of exposition from this Court. That it is extraordinary and to be used sparingly goes without saying. In spite of the very wide terms in which this jurisdiction is conferred, the High Courts have rightly recognised certain limitation on this power. The jurisdiction is not appellate and it is obvious that it cannot be a substitute for the ordinary remedies at law. Nor is its exercise desirable if facts have to be found on evidence. The High Court, therefore, leaves the party aggrieved to take recourse to the remedies available under the ordinary law if they are equally efficacious and declines to assume jurisdiction to enable such remedies to be by-passed. To these there are certain exceptions. One such exception is where action is being taken under an invalid law or arbitrarily without the sanction of law. In such a case, the High Court may interfere to avoid hardships to a party which will be unavoidable if the quick and more efficacious remedy envisaged by Article 226 were not allowed to be invoked."

11. In the instant case, the order contained in Annexure "7" was apparently beyond the jurisdiction of the District Education Officer. In that view of the matter, in my opinion, the writ application filed by the petitioners was maintainable. This contention, therefore of learned counsel for the respondents regarding the alternative remedy also fails.

12. Before parting with this case, I would once more reiterate as observed by their Lordships in 1965 BLJR 844, and direct that a full-fledged Managing Committee should be constituted soon in accordance with the directions contained in the 1964 Rules.

13. In the result, the application is allowed and the impugned order contained in Annexure "7" is quashed. In the circumstances, however, there will be no order as to costs.