
(2016) 03 OHC CK 0022
In the Orissa High Court
Case No : W.P.(C) No. 21999 of 2014

Manguli Behera

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Orissa Education Act, 1969 — Section 3(b)
Orissa Panchayat Samiti Act, 1959 — Section 16, Section 3

Citation : (2016) 03 OHC CK 0022

Hon'ble Judges : Dr. B.R. Sarangi, J.

Bench : Single Bench

Advocate : K.K. Swain and P.N. Mohanty, for the Appellant; A.K. Pandey, Standing Counsel, for the Respondent

Final Decision : Disposed off

Judgement

Dr. B.R. Sarangi, J.—1. The petitioner, who is the Ex-President of the Managing Committee of Bapujee Ashram Residential High School, Goradajhari, in the district of Khorda, has filed this petition seeking to quash the order dated 08.09.2014 under Annexure-4 passed by the Director, Secondary Education, Odisha, Bhubaneswar, approving the reconstitution of the Managing Committee as per the provisions contained under Rule 28(1) of the Orissa Education (Establishment, Recognition and Management of Private High Schools) Rules, 1991 (hereinafter referred to as "1991 Rules").

2. The factual matrix of the case, in hand, is that Bapujee Ashram Residential High School, Goradajhari was notified to receive grant-in-aid from the Government by virtue of the Notification No. 1933 dated 27.09.2008, thereby it is an aided educational institution within the meaning of Section 3(b) of the Orissa Education Act, 1969. The School in question was however managed by a Managing Committee as per the provisions contained under 1991 Rules. The last Managing Committee was reconstituted and approved by the Director, Secondary Education, Odisha, Bhubaneswar on 11.07.2002. Subsequently, the Managing

Committee, headed by the petitioner, was also approved vide Office Order dated 19.01.2005. The term of the Managing Committee which has been approved on 11.07.2002, expired on 10.07.2005. When the School was notified to receive grant-in-aid in the year 2008, the Sub-Collector, Khorda nominated Sri Ghanashyam Sen as the President of the Managing Committee on 19.10.2009. Accordingly, the Managing Committee was reconstituted in terms of the Rule 28 of the 1991 Rules. Since no step was taken for approval of the reconstitution of the Managing Committee, the petitioner approached this Court by filing W.P.(C) No. 602 of 2010 and this Court disposed of the same on 18.03.2010 directing the Director, Secondary Education, Odisha, Bhubaneswar to take a decision strictly in accordance with law within a period of three weeks from the date of production of the certified copy of the said order. In compliance to the said order dated 18.03.2010, the Director Secondary Education, Odisha, Bhubaneswar did not take any steps to approve the reconstitution of the Managing Committee of the said School. In the meantime, the District Education Officer forwarded the proposal of the Headmaster-in-charge, Sri Sarat Kumar Mohapatra to the Director, Secondary Education, Odisha, Bhubaneswar for his approval. Instead of approving the reconstitution of the Governing Body basing upon the proposal submitted earlier the Director, Secondary Education, Odisha, Bhubaneswar approved the proposal submitted by Headmaster-in-charge on 08.09.2014 reconstituting the Managing Committee of the School for a period of three years. Hence this petition.

3. Mr. K.K. Swain, learned counsel for the petitioner though raised several questions in the writ petition, in course of his argument he confined his submission with regard to the approval of the reconstitution of the Managing Committee of the School in question pursuant to the order dated 08.09.2014, which has not been done in compliance to the Rule-28 of the 1991 Rules. It is urged that as required under Sub-rule (4) of Rule 28 of the 1991 Rules the Inspector shall take all necessary steps to reconstitute the Managing Committee in respect of aided High School, but in the present case, the District Education Officer has not applied his mind independently save and except he has recommended the names proposed by the Headmaster-in-charge of the School, Sri Sarat Kumar Mohapatra and acted as a post office between the Headmaster and the Director, consequentially, the order impugned has been passed. It is further urged that if the specific mode has been prescribed under the 1991 Rules, the same has to be adhered to strictly and non-compliance of the same, cannot sustain in the eye of law. Therefore, he seeks for interference of this Court. To substantiate his contention, he has relied upon the judgments of the Apex court in *Union of India and another v. Purushottam*, , (2015) 3 SCC 779; *Juari Cement Limited v. Regional Director, Employees' State Insurance Corporation, Hyderabad and others*, , (2015) 7 SCC 690 and *D.N. Jeevaraj v. Chief Secretary, Govt. of Karnataka & Ors.*, , 2016 (I) OLR (SC) 179.

4. Mr. A.K. Pandey, learned Standing Counsel for School and Mass Education Department, supporting the reconstitution of the Managing Committee stated

that the same has been constituted in conformity with the provisions contained in Rule 28 of the 1991 Rules and the Inspector of Schools has not acted on the basis of the recommendation made by the Headmaster-in-charge of the School, Sri Sarat Kumar Mohapatra, rather, Letter No. 3014 dated 05.11.2013 to which reference has been made in the order impugned dated 08.09.2014 under Annexure-4, has not been produced before this Court nor has it been referred to in the writ petition to substantiate the allegation. Therefore, the same amounts to suppression of facts. The petitioner having not come to the Court with clean hand, the writ petition at his instance cannot sustain. The order impugned indicates that action has been taken on the basis of Letter No. 3014 dated 05.11.2013 of the District Education Officer, Khurda. The same having not been produced and without disclosing the contents thereof, the contention raised that the District Education Officer, Khurda has acted as a post office, cannot sustain in the eye of law. It is further urged that the petitioner has no locus to file this writ petition. Accordingly, he seeks for dismissal of the same.

5. Mr. S.K. Das, learned counsel for opposite party No. 4 though has not filed counter affidavit, supports the contention raised by Mr. A.K. Pandey, learned Standing Counsel for School and Mass Education Department.

6. Mr. M.K. Mishra, learned counsel for opposite party Nos. 5 to 13 has also supported the stand of Mr. A.K. Pandey, learned Standing Counsel for School and Mass Education Department.

7. On the basis of the facts pleaded, it is to be considered whether the reconstitution of the Managing Committee of the School in question has been done in conformity with the provisions of Rule 28 of 1991 Rules?

8. Before advertent the relief sought by the petitioner in the writ petition, query was made by the Court whether the claim is covered by Rule 27 or Rule 28 of 1991 Rules to which Mr. K.K. Swain, learned counsel for the petitioner stated that he seeks relief under Rule 28 of 1991 Rules and abandons the plea of Rule 27 of the said Rule.

9. Admitted fact of the case, in hand, is that the School has become aided educational institution and therefore, Rule 28 of the 1991 Rules is applicable. Rule 28 of the 1991 Rules reads as follows"

"28. Managing Committee of Aided High School -

(1) The Managing Committee of an Aided High School shall be reconstituted in the following manner, namely:

(a) The local M.L.A. of the constituency in which the School is situated;

(b) The Sarpanch of the Grama Panchayat or a member of the Municipal Council or Notified Area, as the case may be, in which the School is situated;

(c) The member of the Panchayat Samiti elected under Clause; (h) of Sub-section(1) of Section 16 of the Orissa Panchayat Samiti Act, 1959 in which the

School is situated or in case of an Urban area Chairman of the Municipality or the Notified Area Council, as the case may be;

(d) Six other members of the locality out of which one shall be donor or his successor, if the donation exceeds Rs. 50,000 (Rupees fifty thousand), one person shall be from among parents/guardians of the students one woman, one person belonging to S.C./S.T. and two persons of the locality who are interested in the field of education :

Provided that when the required number of person or persons from any of the category is not available the vacancy may be filled up by person, or persons belonging to any other category.

(e) The Headmaster or the teacher-in-charge of Headmaster of the school in his ex-officio capacity.

(f) Senior most trained graduate teacher of the School.

Note - The M.L.A., Chairman of the Municipality or the Notified Area Council shall be at liberty to nominate a person each to represent him, to the Managing Committee and the person. So nominated shall enjoy office during his pleasure.

(2) The Headmaster of the school or the teacher in-charge of Headmaster shall be the Secretary of the Managing Committee in his ex-officio capacity.

(3) The Sub-Collector shall nominate the President from among the members specified in Clause (a) to (d) of Sub-rule (1).

(4) The Inspector shall take all necessary steps to reconstitute the Managing Committee in respect of aided High School and of any such School which becomes aided.

(5) The Managing Committee reconstituted with the office bearers and members on its approval by the prescribed authority, as notified under Clause (m-1) of Section 3 of the Act shall be communicated to the Secretary.

(6) Any vacancy in membership caused due to resignation, death or otherwise shall be filled up in the aforesaid manner for the unexpired portion of the term of the Managing Committee.

(7) The Secretary shall intimate the change of membership with reasons to the Inspector for his approval.

(8) No meeting of the Managing Committee shall be invalid merely by reason of any, vacancy in the membership or any defect in the constitution of the said committee or any irregularity in its procedure not affecting the merit."

10. In view of the aforementioned Rules, the reconstitution has to be made under Sub-rule (1) of Rule 28 of 1991 Rules. As per Sub-Rule (2) of Rule 28 of 1991 Rules, the Headmaster of the school or the teacher-in-charge of Headmaster shall be Secretary of the Managing Committee in his ex-officio

capacity. Under Sub-Rule (3) of Rule 28 of 1991 Rules, the Sub-Collector shall nominate the President from among the members specified in Clauses (a) to (d) of Sub-rule (1). Sub-Rule (4) of Rule 28 of 1991 Rules, says that the Inspector shall take all necessary steps to reconstitute the Managing Committee in respect of aided High School and of any such School which becomes aided. Therefore, pivotal role is being played by Inspector of School, who is to take all necessary steps to reconstitute the Managing Committee in respect of aided High Schools.

11. As it appears from the records, the Inspector of Schools instead of applying his mind independently submitted letter on 01.11.2012 recommending the proposal of Sri Sarat Kumar Mohapatra, senior most Asst. Teacher, who has been allowed to remain-in-charge of the School temporarily, for reconstitution of the Managing Committee to the Director, Secondary Education, Odisha, Bhubaneswar for approval of the Managing Committee. On the basis of such recommendation, the Director has passed the impugned order under Annexure-4 on 08.09.2014. It appears that, as required under Sub-Rule (4) of Rule 28, the District Education Officer has not applied his mind independently, but only sent the proposal of reconstitution of the Managing Committee, submitted by the Senior most Asst. Teacher, which has been duly approved by the Director, Secondary Education, Odisha, Bhubaneswar by the impugned order. The action of the District Education Officer is not in conformity with the Sub-Rule (4) of Rule 28 of 1991 Rules in view of the fact that though he has to take all necessary steps for reconstitution of the Managing Committee, but that has to be done independently with due application of mind and not on the basis of the proposal of the senior most Teacher of the School and consequentially the approval having been made by the Director, Secondary Education, Odisha, Bhubaneswar, the same suffers from non-application of mind by the District Education Officer. The 1991 Rules having been framed under the Rule making power under Orissa Education Act, 1969, has got its own statutory force and therefore, the authority has to act in adherence to the provisions contained under the 1991 Rules and for any deviation thereof, consequential order cannot sustain in the eye of law.

12. In *Purushottam* (supra) the Apex Court held that the Rules are framed for dealing in detail with myriad situations that may manifest themselves, for the guidance of the authority concerned. Rules must, therefore, be interpreted in a manner which would repose them in harmony with the parent statute. Therefore, non-compliance of the same was held to be ultra vires.

13. In *Zuari Cement Limited* (supra), the Apex Court held that it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this Rule is traceable to the decision in *Taylor v. Taylor*, (1875) LR I Ch D 426, which was subsequently followed by Lord Roche in *Nazir Ahmad v. King Emperor*, , AIR 1936 PC 253(2) and subsequently, the said principle has also been followed in *Babu Verghese v. Bar Council of Kerala*, , (1999) 3 SCC 422.

14. In *D.N. Jeevaraj* (supra), the apex Court held in paragraph- 42 as follows:

"42. In *Mansukhlal Vithaldas Chauhan v. State of Gujarat* , (1997) 7 SCC 622 this Court held that it is primarily the responsibility and duty of a statutory authority to take a decision and it should be enabled to exercise its discretion independently. If the authority does not exercise its mind independently, the decision taken by the statutory authority can be quashed and a direction given to take an independent decision."

15. Applying the above principles to the present context, it appears that in exercise of power vested on District Education Officer under Sub-Rule (4) of Rule 28 of 1991 Rules he has not applied his mind independently, rather, he has only transmitted the proposal submitted by the senior most Teacher of the School for approval to the Director, Secondary Education, Odisha, Bhubaneswar. Non-application of mind independently by the District Education Officer for reconstitution of the Managing Committee, is not in consonance with the provisions contained under Sub-rule (4) of Rule 28 of 1991 Rules. Apart from the same, Rule does not vest power on the District Education Officer to act as post office, rather the District Education Officer has to apply his mind independently and should submit the proposal for approval to the Director, Secondary Education, Odisha, Bhubaneswar. The same having not been done in consonance with the Rule governing the field, the action so taken by the District Education Officer cannot sustain in the eye of law.

16. The contention raised by Mr. A.K. Pandey, learned Standing Counsel for School and Mass Education Department that Office Letter No. 3014 dated 05.11.2013, to which reference has been made in the impugned order, having not been produced, different view can be taken by this Court. Consequentially, this Court directed for production of the file dealing with letter No. 3014 dated 05.11.2013. In response to the same, the file was produced and it is verified that the said letter has been sent in the shape of compliance to Letter No. 14121 dated 25.03.2013 by which Office of the Director of Secondary Education, Odisha, Bhubaneswar made some query regarding approval of Managing Committee of the School in question and no proposal has been submitted by the District Education Officer independently except submitted the proposal sent by Sri Sarat Kumar Mohapatra, Senior most Asst. Teacher of the School in question. Even though reference has been made to the letter dated 05.11.2013, it appears that the same is a letter of reminder to the Director, Secondary Education, Odisha, Bhubaneswar for reconstitution, which has been acted upon and Annexure-4 has been issued. Therefore, the action taken by the Inspector of School is not in consonance with the provisions of Sub-rule (4) of Rule 28 of 1991 Rules. When a gross illegality has been committed by the authority for reconstitution of Managing Committee, which has been brought to notice of the Court by the present petitioner, without delving into the question of locus standi of the petitioner, this Court is of the considered view that the order passed under Annexure-4 for reconstitution of the Managing Committee of Bapujee Ashram Residential High School, Goradajhari in the district of Khurda under Rule 28(1) of 1991 Rules dated 08.09.2014 cannot sustain in the eye of law. Accordingly, the

same is hereby quashed and the matter is remitted back to the District Education Officer, Khurda for submission of proposal afresh in-compliance to the Sub-rule (4) of Rule 28 of 1991 Rules.

17. With the above observation and direction, the writ petition stands disposed of. No costs.