

(1972) 08 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1565 of 1971

Mishrilal Rai and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-08-1972

Acts Referred:

Bihar High Schools (Constitution, Powers and Functions of Managing Committee)
Rules, 1964 — Rule 17A(1) , 9

Citation : AIR 1973 Patna 117

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

Bench : Single Bench

Advocate : J. Pandey, R.K.P. Agarwal and Shashidhar Prasad Yadav, for the Appellant; Uday Sinha, Asst. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Singh, J.—This application by Mishrilal Rai and Maheshwar Prasad Rai, under Articles 226 and 227 of the Constitution of India, is directed against an order passed by the President, Board of Secondary Education, Bihar (respondent No. 2), which was communicated to Maheshwar Prasad Rai (petitioner No. 2), the Secretary of the Managing Committee of the Dhamaun High School, and to the Headmaster of the said School by the Secretary, Board of Secondary Education, Bihar (respondent No. 3), under letter, dated the 4th September, 1971 (Annexure 1). The gist of Annexure 1 is that according to the rules, the term of the Managing Committee of the said school had expired on the 30th October, 1971. Therefore, under orders of respondent No. 2, three persons were nominated to constitute ad hoc committee of the said school, to function till the Committee of the School was constituted, afresh.

2. In order to appreciate the points involved in this application, it will be necessary to state briefly some relevant facts. Mishrilal Rai (petitioner No. 1) is the President of the said school, whereas Maheshwar Prasad Rai (petitioner No. 2), as mentioned earlier, is the Secretary of the said school. The school in

question is a Government aided school. According to the provisions contained in Chapter III of the Bihar High Schools (Constitution, Powers and Functions of Managing Committee) Rules, 1964, as amended in 1967 (hereinafter to be referred to as "the Rules"), a Managing Committee of the said school was constituted in the year 1968. The President and the Secretary of the School were elected under Rule 9 of the Rules on the 1st November, 1968, The Managing Committee began to function from that date. The petitioners have mentioned in paragraph 2 (d) that under the provisions of the Bihar High Schools (Control and Regulation of Administration) Act, 1960 (hereinafter to be referred to as "the Act") and the Rules, fresh constitution of the Managing Committee was to take place after the 1st November, 1971, even then respondent No. 2 passed the order nominating an ad hoc committee, which was communicated to the petitioners under Annexure 1.

3. Mr. J. Pandey, learned counsel appearing on behalf of the petitioners, has challenged the order on various grounds. He has submitted that:--

(i) the Members of the Managing Committee of the School, even after the expiry of their term of three years, according to the provisions of the Rules, should have been allowed to continue in office till the Committee was constituted, afresh,

(ii) Respondent No. 2 had no power either under the Act or under the Rules to nominate an Ad hoc Committee, to replace the duly constituted Managing Committee of the School, and,

(iii) Respondent No. 2 had no jurisdiction to dissolve the existing Managing Committee, without giving notice to the members of the Committee, and without giving them opportunity to represent their case.

4. In the application, the petitioners have impleaded the State of Bihar, the President, Board of Secondary Education, and the Secretary of the Board of Secondary Education, as respondents 1, 2 and 3, respectively. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, the District Education Officer, and the Subdivisional Education Officer have been impleaded as respondents Nos. 7, 8 and 9 respectively. The petitioners have also impleaded respondents 4 to 6, who were nominated as the Members of the Ad hoc Committee by respondent No. 2. But, in this case, no counter-affidavit has been filed on behalf of any of the respondents. Mr. Uday Sinha, learned Assistant Standing Counsel, has filed appearance on behalf of the State of Bihar and its officers, who are respondents. Although, as mentioned above, no counter-affidavit has been filed, he has rendered assistance to the court on the question of law.

5. It will be convenient to take up ground No. 1 first. The scheme of the Rules 1964 makes provision for three categories of schools. Rule 9 relates to election of the President and the Secretary of the Managing Committee of a school other than subsidised and Proprietary school. It is the admitted case of the petitioners that the school in question comes in this category, as it is a Government aided

school. Rule 10 contains provision for the second category i.e. for the appointment of the President and the Secretary of the Managing Committee of a subsidised school and the term of their offices, whereas, Rule 14 provides for the third category of the school, namely, proprietary school, for the appointment of the President and the Secretary of the Managing Committee. In the present case, as mentioned earlier, Rule 9 is relevant, and the result of this case depends upon the interpretation of Clauses (5) and (7) to Rule 9. It will be useful to reproduce those clauses. Clause (5) reads thus:--

"(5) The term of Office of the President of the Committee shall be three years from the date of his election or till the date of his election or till the date he ceases to be a member of the Committee, whichever is earlier."

Clause (7) is to this effect:--

"The term of office of the Secretary of a Committee shall be three years from the date of his election or till the date he ceases to be a member of the committee whichever is earlier,

Provided that--

(a) Secretary may at any time resign from the office in which case, his resignation will be effective from the date it is accepted by the committee,

(b) the committee may at any time decide, by at least two thirds of the total membership, to remove the Secretary. The decision of the committee shall take effect from the date the resolution in that behalf is passed by the committee."

The other relevant Rule is 17-A which provides--

"(1) The term of office of nominated, elected, selected or co-opted members of a committee shall be three years from the date of constitution of the committee.

(2) If such member of a committee is unable by reason of his death, resignation, removal or otherwise to complete his full term of office, the vacancy so caused shall be filled by nomination, election, selection or co-option, as the case may be, of another person, and the person so nominated, elected, selected or co-opted shall fill such vacancy for the unexpired portion of the term for which the member in whose place such person is nominated, elected, selected or co-opted would have otherwise continued in office."

6. Mr. Pandey, learned counsel appearing on behalf of the petitioners, contended that these provisions should be interpreted to mean that the Secretary, President and the Managing Committee of the said school would continue in office till the fresh Managing Committee is constituted. According to him, the intention of the rule making authority should be gathered by reference to other rules provided in the said Rules. In this connection, he referred to Rule 3, which reads as under:--

"3. Constitution of Managing Committee of a School other than a Proprietary School--

The managing committee of a school other than a proprietary school shall consist of the following members, namely:--

- (1) All hereditary members and life members (declared under Rule 4),
- (2) The Headmaster (ex-officio),
- (3) A teachers' representative to be appointed by the Headmaster in the manner laid down in Rule 5,
- (4) An officer of the Education Department of the State Government to be nominated by the President of the Board of Secondary Education,
- (5) Two donors, if available to be elected in the manner laid down in Rule 6,
- (6) Two guardians, to be elected in the manner laid down in Rule 7,
- (7) One member of the State Legislature representing or residing in the Assembly Constituency in which the School is situated to be co-opted by the members referred to in items (1), (4), (5) and (6) of this Rule,
- (8) Three persons of the locality, interested in, education, of which one shall be a member of the Scheduled Castes or Scheduled Tribes if not otherwise a member, to be co-opted by the members referred to in items (1) to (7) of this Rule."

With reference to the said Rule, learned counsel contended that the members mentioned in items (1) to (5) hold permanent office and they are not affected by any term provided in Rule 9 or 17-A of the Rules. Members mentioned in items (6) to (8), though having limited terms, as mentioned in Rules 9 and 17-A, but they also would continue in office till the fresh managing committee is constituted.

7. In my opinion, members indicated in item (1), no doubt, hold term in the permanent nature. But this is not of any consequences, as in the application, the petitioners have not stated that there was any hereditary member in the Committee of the said school. I do not agree with the contention of the learned counsel that the term of office of members mentioned in items (2) to (5) is also permanent. In item (2) regarding the Headmaster, it is specifically mentioned in the rule that his term will be ex-officio. As regards members in items (3) and (5), specific rules for their elections are mentioned in the said Rule. As regards members mentioned in item (4), it is clearly mentioned in the Rule that an officer of the Education Department of the State Government is nominated by the President of the Board of Secondary Education. Therefore, it cannot be said that they also hold any office of permanent nature in the committee.

8. In order to lend support to his contention, Mr. Pandey also referred to Clause (4) of Rule 10, the relevant portion of which reads as:

"The term of the office of the Secretary appointed by the President of the Board of Secondary Education, shall be three years and shall include any further period which may elapse between the date of the expiration of the said three years and

that on which the newly nominated Secretary takes over charge of the office."

He also referred to Clause (2) of Rule 14, the relevant portion of which is to this effect:--

"The term of office of the Secretary and the President shall be three years, which shall include any further period which may elapse between the expiration of the said three years and the date on which the newly appointed President or Secretary, as the case may be, takes over charge of his office."

Mr. Pandey has submitted that the underlined portions of Clause (4) of Rule 10 and Clause (2) of Rule 14 clearly indicate the intention of the rule-making authority that the terms of office should continue till fresh constitution of the Managing Committee. He emphasised that Clause (4) of Rule 10 and Clauses (5) and (7) of Rule 9 fall within the same Chapter III of the Rules. According to him, there was no reason for the rule-making authority to make different provisions for the school other than subsidised and the proprietary schools. Clauses (5) and (7) of Rule 9 should be read along with Clause (4) of Rule 10, so that the term shall include any further period till the newly elected Secretary and President take over charge of their office. In my opinion, underlined portions of Clause (4) of Rule 10 and Clause (2) of Rule 14 do not at all support the contention of the learned counsel for the petitioners, on the contrary, they go against his contention. If the rule-making authority wanted similar provision under Sub-clauses (5) and (7) of Rule 9, there was nothing to prevent them. Knowingly, they have dropped the underlined portions of Clause (4) of Rule 10 and Clause (2) of Rule 14, while making provisions under Sub-clauses (5) and (7) of Rule 9. The intention of the rule-making authority becomes further clear, if we refer to Rule 17-A, which deals with the elected members who constitute the managing committee under Rule 3. The said Rule, I have already quoted earlier. Clause (1) specifically mentions that the committee shall be for three years from the date of the constitution of the committee. Further, the words "expired portion of the term" occurring in Clause (2) of Rule 17-A also throw light that the rule-making authority had in view "a fixed term".

9. It is well established that the rules framed under a Statute, are to be considered in the same manner as the provision of an Act. The cardinal rule for the construction of a statute is that they should be construed according to the intention expressed in the statutes themselves. In *Craies on Statute Law*, 6th Edn., by S.G.C. Edgar, it is mentioned at page 67,

"In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication.

XX XX XX The meaning which words ought to be understood to bear is not to be ascertained by any process akin to speculation, the primary duty of a court of law is to find the natural meaning of the words used in the context in which they occur that context including any other phrases in the Act which may throw light

on the sense in which the makers of the Act used the words in dispute."

In order to find out the intention of the rule-making authority, therefore, we have to look to the other provisions in the Rules. As held earlier, the provisions in Rules 10 and 14 make it abundantly clear that they deliberately omitted the marked portions of those two rules in Sub-clauses (5) and (7) of Rule 9.

10. In *Lal Mohan Sah v. State of Bihar* 1965 BLJR 844 the vires of certain Rules of 1964 were challenged. It was contended in that case that Rule 39 practically encroaches on the power conferred by Sub-section (2) of Section 5 of the Act. *Narasimham, C. J., Bahadur, J.* (as they then were), observed that it was true that the rule-making authority might have omitted Rule 39 altogether and allowed the old Managing Committee to function until the new Managing Committee was constituted under the rules. Their Lordships said that that was essentially a question of policy with which the courts were not concerned. On a careful consideration, I do not find any merit under ground No. 1.

11. Now, I take up grounds Nos. (II) and (III) together for the sake of brevity. Mr. Pandey submitted that respondent No. 2 did not derive power from the Act or from the Rules to appoint the Ad Hoc Committee, nor he had jurisdiction to terminate or dissolve the Managing Committee without giving notice to the Members of the Committee, and without affording them opportunity to represent their case. According to him, only under the contingency mentioned u/s 5 of the Act, he could have done so. He drew my attention to Section 5 of the Act, which reads thus:--

"(1) For every high school there shall be a managing committee constituted in such manner as may be prescribed.

(2) If the Board is of the opinion that the managing committee of a high school is not functioning in a way conducive to the maintenance of discipline among its teachers and pupils and is not carrying out the directions of the Board or administering the finances of such school properly it may, by an order, after giving the managing committee a reasonable opportunity of being heard, suspend for a period not exceeding six months or dissolve the managing committee, provided that in case of high schools established and administered by minorities based on religion or language, the Board shall not make such order.

(3) Where the Board suspends or dissolves a managing committee under Sub-section (2) the powers and duties of the managing committee shall be exercised and performed by such person or persons as may be appointed by the Board until the expiry of period of suspension or the constitution of the managing committee, as the case may be.

(4) Where a managing committee is dissolved under Sub-section (2), a new managing committee shall be constituted in accordance with the rules made in this behalf within one year of such dissolution."

Mr. Pandey submitted that the above provision is of no avail to respondent No. 2

in the present case. The other provision, learned counsel pointed out, is with regard to the suspension or removal of the President, Secretary or Members of the Committee under Rule 10-A of the Rules. The said rule is to this effect:--

"(1) The President of the Board of Secondary Education, on being satisfied that circumstances exist which render it necessary to take immediate action in the interest of the school, may at any time suspend the President, the Secretary or any member of the committee other than life member or hereditary member and after giving such reasonable opportunity as he may deem proper, to the person concerned to explain his conduct, remove him from his office and in such a case the order of suspension or removal will take effect from the date of the issue of the order by the President to that effect, and the person so removed shall not be eligible to be nominated, elected, selected or co-opted, as the case may be to fill the casual vacancy.

(2) As soon as a President or a Secretary is suspended by an order under Sub-rule. (1), the President of the Board of Secondary Education shall forth with nominate a person to act as such till the order of suspension is vacated, and in case of removal, till another member is elected to fill the vacancy."

12. Learned counsel submitted that the above provision also does not empower respondent No. 2 to dissolve the Managing Committee and to appoint an ad hoc committee, on the expiry of the term of three years under Rule 9.

13. In my opinion, in the present case annexure 1 does not terminate or dissolve the Managing Committee. It only mentions that the term of the Managing Committee was over according to the Rules. It is true that there is no specific provision either in the Act or in the Rules for appointing ad hoc committee when its term expires according to Clauses (5) and (7) of Rules 9 and 17-A (1) of the Rules. The question, therefore, arises whether in such a circumstance, respondent No. 2 could have acted under implied power for appointing ad hoc committee. It needs hardly be emphasised that the petitioners and other members of the committee became functus officio on the expiry of their term of three years. They could not have passed any legal order. In my judgment, therefore, under the circumstances, respondent No. 2 has implied power for appointing ad hoc committee. Reference may be made to Statutory Construction of Interpretation of Law by Crawford 1940 publication. It is mentioned at page 267--

XX XX XX "Many matters of minor details are often omitted from legislation. If these details could not be inserted by implication, the drafting of legislation would be an interminable process and the legislative intent would likely be defeated by a most insignificant omission. Consequently, these minor details are considered as if included in the general terms of the enactment as well as in the purpose sought to be achieved by the legislature, and, therefore, are regarded as actually intended by the legislature. In a broad sense, true implications are as much a part of the language which makes up the statute, as the meanings of the

various words are a part of it."

If the rule-making authority had fixed a term of three years under the above rules, which I have already held, the function of the school would come to stand still particularly, in the absence of the Secretary as well as the President. The education would suffer and there would be none to look after its administration. The petitioners do not state in their petition that there was any member whose term of three years had not expired. Therefore, in that situation, even in the absence of specific rules or provision in the Act, such power of respondent No. 2 has to be construed by implication. Thus, the allegations of Mr. Pandey under grounds (II) and (III) also fail.

14. In the result, I do not find any flaw in the order of respondent No. 2, which was communicated to the petitioners under Annexure 1, which is affirmed. The application is, therefore, dismissed but without cost. In the circumstances of the case, however, I direct respondent No. 2 to take steps for reconstitution of the managing committee of the said school within three months from today.