
(1998) 08 OHC CK 0037
In the Orissa High Court
Case No : O.J.C. No. 8033 of 1995

Narendra Kumar Rout

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-08-1998

Acts Referred:

Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 — Rule 25(1)
Orissa Education Act, 1969 — Section 4(2)

Citation : AIR 1999 Ori 71

Hon'ble Judges : S.C. Datta, J;A. Pasayat, J

Bench : Division Bench

Advocate : J. Patnaik, H.N. Dhal, A.A. Das and B. Mohanty, for the Appellant;
Addl Govt. Advocate, Bijan Ray, C. Choudhary, B.K. Nayak, B. Mohanty, J.K. Khundia and D. Chhotray, for the Respondent

Judgement

Pasayat, J.—This application, which is stated to have been filed in public interest questions nomination of opposite party no. 4 as the

President of Anchalika Mahavidyalaya, Natadihi (Opp. party no. 3). The point raised is that opposite party no. 4 is not an eminent educationist for

the purpose of being nominated as President of Governing Body of an aided college. The question has arisen in the background of Sub-rule (3) (or

Sub-rule (1)--Ed.) of Rule 25 of the Orissa Education (Establishment, Recognition, Management of Private Junior Colleges/Higher Secondary

Schools) Rules, 1991 (hereinafter referred to as the "new Rules"). Said Rules have come in place of Orissa Education (Management of Private

Colleges Rules, 1979 (in short, the "old Rules"). The institution to which the dispute relates is an aided educational institution in terms of Section 3

(b) of the Orissa Education Act, 1969 (in short, the "Act").

2. The provisos to Sub-rule (1) of Rule 25 of the new Rules with which we are concerned read as follows :

25. Governing Body of Aided College -

(1) Notwithstanding anything contained in these rules as soon as the college becomes an aided college, the Governing Body of the college shall be

reconstituted in the following manner -

(i) The Collector/Additional District Magistrate/Sub-Collector of the subdivision in which the college is situated shall be ex officio President of the

Governing Body and the Principal of the college or the teacher in charge of the Principal shall be its ex officio Secretary.

Provided that Government may nominate any eminent educationist to be the President who shall continue as such during the pleasure of the

Government. In such cases the Collector/Additional District Magistrate/Sub-Collector shall be a member;

Provided further that in case a college established and managed by a Trust, Government, shall appoint a nominee of the Trust as President of the

Governing Body and in such cases the Collector/Additional District Magistrate/Sub-Collector shall be a member of the Governing Body.

(ii) Two seniormost teachers of the college shall be ex officio members of the Governing Body.

(iii) The Member of Legislative Assembly representing the constituency in which the college is situated and the Chairman of the Panchayat

Samiti/Municipality/Notified Area as the case may be, in which the college is situated shall be ex officio member of the Governing Body.

(iv) The Vice-Chancellor of the University, the Director and the Member of Parliament representing the Parliamentary Constituency in which the

college is situated shall nominate one member each who shall hold office during their pleasure.

(v) Four persons of the locality interested in the field of education which may include a donor, one person from Scheduled Tribes or Scheduled

Castes community and one woman shall be nominated by the President of the Governing Body to be members of the Governing Body.

xxx xxx xxx.

3. It is to be noted that while the proviso to Rule 23 (1) (i) deals nomination of "eminent educationist" to be the President, so far as membership is

concerned four persons of the locality "interested in the field of education" are to be nominated as members. According to petitioner, opposite

party no. 4 is involved in a case under the NDPS Act. Petitioner submitted that nomination of such person having criminal background shall be

hardly in the interest of education. It is also submitted that opposite party no. 4 is not highly qualified and is merely Matric C.T.

Opposite party no. 4 in his counter affidavit has stated that he is highly qualified, and he has been falsely implicated in the NDPS case. He has

described his educational background and has stated that he was working as a Teacher from 1975 to 1980. was a Member of the Senate of Utkal

University for a period of five years being nominated by Hon"ble Governor of Orissa. During continuance as Member of the Senate, he had

participated in important decisions of Utkal University with regard to educational policies and University affairs. He was functioning as Secretary of

the Teachers Federation of Keonjhar district. He was founder of a college at Hatadihi and continued as President of the Governing Body from

1986 to 1993. He has established number of Primary Schools, M. E. Schools, U. P. Schools, High Schools, and Colleges including one B.Ed.

College and for upliftment and welfare of scheduled castes/scheduled tribes during the period from 1986 to 1989 he was Chairman of House

Committee of Orissa Legislative Assembly. The only question is whether the nomination was legal.

According to opp. party No. 4 he was Chairman of Harijan and Tribal Atrocities Enquiry Committee from 1985 to 1989. He was also a Member

of Consultative Committee of Department of Forest and Environment from 1987-89, and was Minister of Mining, Geology, Science and

Technology during 1989-1990. He is a graduate with certificate of training qualification and is not a matriculate with certificate of training

qualification as alleged in the writ application. The vehicle which was allegedly involved in the offence was missing and due report was given at

Capital P.S., Bhubaneswar. The Andhra Pradesh High Court by order dated 15-2-1993 in Criminal Misc. Petition No. 866 of 1993 arising out of

Criminal Revision No. 177 of 1993 was pleased to grant stay of further proceedings of the trial Court. Criminal Revision No. 177 of 1993 was

disposed of on 19-4-1996. The Andhra Pradesh High Court remanded the matter to the Special Court for fresh disposal in accordance with law.

The vehicle in question was released in favour of opp. party No. 4 by Andhra Pradesh High Court in Criminal Misc. Petition No. 2440 of 1992.

4. In the counter-affidavit filed by the State, it has been stated that opp. party No. 4 is a graduate with C.T. qualification and experience in the line

of teaching and is a founder of large number of educational institutions. Nomination has been made under Rule 27 of the new Rules. Rule 39 deals

with disqualification of membership. Reference is made to the following observation of the State :

Shri Jayadev Jena, Minister and Present Member of the Orissa Legislative Assembly is the builder of this institution and has built several

educational institutions in the locality. Mr. Jena himself was a Teacher and he has gained a lot of experience in the line of education.

It was stated that he was, not involved in the transportation of articles as was evident from the papers filed and he was charge-sheeted for his being

owner of the vehicle. Rule 29(c) provides that a person shall be disqualified to become a Member of the Governing Body or to continue as such if

he is convicted of an offence involving moral turpitude under any law for the time being in force. Since the criminal proceeding is subjudice and no

final adjudication has been made, question of removing him does not arise. It is stated in paragraph 11 of the counter-affidavit that there is no

information about the criminal case and even if such a criminal case was instituted, as the matter is sub-judice it would not be proper to take any

view prejudicial to opposite party No. 4.

5. It is to be noted that in several cases, question as to who is an eminent educationist had come up for consideration of this Court. As the

expression presents difficulties in the absence of statutory definition, it was observed in OJC Nos. 3150 and 3359 of 1992 (Nardaraj Mohan

Senapati v. State and Ashok Kumar Sohan v. State) disposed of on 1-3-1993, that the State should take steps to define or elucidate the

expression. Unfortunately till now same has not been done.

However, in the meantime by notification dated 28-6-1997 of the Department of Higher Education vide S.R.S. No. 326/97 published in the

Orissa Gazette (Extraordinary) dated 30-6-1997 the expression has been substituted by "person interested in the field of education". It is to be

noted that the real purpose of nominating an eminent educationist as President

is to bring in an academic atmosphere in the institution. Students are at the threshold of going for higher studies. That being the background, all possible efforts should be taken to see that the persons who are nominated, do not have black-track record. It may be that false accusations on account of political or personal rivalries are made. But the nominating authorities, made particularly when its the State Government should steer-clear of" all sorts of controversies.

6. During the course of hearing, learned counsel for opposite parties filed copy of the order passed by the learned First Additional Metropolitan

Sessions Judge, Visakhapatnam in S.C. No. 169 of 1992 wherein opp. party No. 4 has been discharged on the ground that there is no material on

record to frame charge against him. It is to be noted here that the term of office of the Governing Body is three years in terms of Section 7(4) of

the Act. The impugned order vide Annexure 1 was passed on 18-9-1995, and therefore would lose its currency on 17-9-1998, which is a few

weeks hence. That being the position, and in the absence of any order of restraint on the functioning of opposite party No. 4, any adjudication of

the question whether he is an eminent educationist would really be of academic interest. Additionally the expression "eminent educationist" has

been substituted by the expression "persons interested in the field of education", and therefore, there is no necessity for discussing the academic

question as to whether opp. party No. 4 was an eminent educationist, though the substitution has no retrospective effect. It is true that when the

question of reconstitution of the Governing Body comes up for consideration, the prescribed authority shall take note of the expression holding the

field and make proper nomination, if necessity so arises. It should be borne in mind that educational atmosphere of the institution is of paramount

consideration and importance, and if a nomination is made, that aspect has to get primacy. Nomination of any unsuitable or undesirable person

shall be against the interest of the society at large and of the institution in particular.

With the aforesaid observations, the writ application is disposed of.

S.C. Dutta, J.

7. I agree.