

(1998) 11 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 4327 of 1998

Padmanav Dehury and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-11-1998

Acts Referred:

Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 — Rule 27
Orissa Education Act, 1969 — Section 3

Citation : AIR 1999 Ori 97

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : M.M. Senapaty, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Pasayat, J.—Nomination of Ramachandra Mohapatra as President of the Governing Body of Ramamani Mahavidyalaya, Kantabad in the district of Khurda is under challenge in this writ application. Said nomination was made by the Director of Higher Education, Orissa, Bhubaneswar under Rule 27 (wrongly stated to be Section 27 in Annexure-1) of the Orissa Education (Establishment, Recognition, Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 (in short, the "Rules"). The institution is an aided educational institution within the meaning of Section 3 (b) of the Orissa Education Act, 1969 (in short, the "Act").

2. Main plank of challenge is that said Rama Chandra Mohapatra is not an eminent educationist which is a sine qua non for such nomination. It is highlighted that originally by order dated 4-9-1997 (Annexure-1) the Sub-Collector, Khurda was nominated by the Government as the President of the Governing Body. Subsequently by order dated 21-11-1997 (Annexure 2), the impugned order nomination of Rama Chandra was approved by the Director. The

Sub-Collector was approved as the Member of the Governing Body.

3. A brief history of the power relating to such nomination needs to be noted. The fore-runner of the present Rules was The Orissa Education (Management of Private Colleges) Rules, 1979 (hereinafter referred to as the "old Rules"), Sub-rule (3) of Rule 3 of the said Rules held the field so far as nomination is concerned. The requirement then was "person interested in the field of education". Subsequently it was substituted by the expression "eminent educationist". The expression "eminent educationist" has not been defined. An Educationist is "one who is skilled in the methods of education and teaching", and "one who promotes education". The expression had come up for consideration in several cases before this Court, and it was felt that neither it is easy to explain nor to conceive. It was observed in OJC Nos: 3130 and 3359 of 1992 (Mardaraj Mohan Senapati v. State and Ashok Kumar Sahoo v. State) disposed of on 1-3-1993, that the rule making authority can consider whether the expression "eminent educationist" needs any definition or elucidation. It is interesting to note that originally in the old Rules the requirement was "person interested". From 1991 till 1997 the requirement was "an eminent educationist", and thereafter again from June, 1997 the expression "person interested" has been substituted by notification dated 28-6-1997 of the Department of Higher Education vide S. R. O. No. 326/97 published in the Orissa Gazette (Extraordinary) dated 30-6-1997. The relevant rule reads as follows :

"27. Governing Body of Aided Higher Secondary School (Junior College) -- (1) Notwithstanding anything contained in these Rules as soon as a Junior College/Private Higher Secondary School becomes an aided one the Governing Body shall be reconstituted in the following manner:

(i) The Collector/Additional District Magistrate/Sub-Collector of the District/Sub-division 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 Collector/Additional district Magistrate/Sub-Collector shall be a member:

Provided further that in case of 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 senior-most teachers of the college, local M.L.A., Chairman, Panchayat Samiti/Municipality/Notified Area, as the case may be, in which the college is situated shall be the ex officio members.

(iii) The Member of Parliament of the constituency in which the college is

situated, the Vice-Chancellor of the University concerned and the Director, shall nominate one person each who shall hold office as member of the Governing Body during their pleasure.

(iv) Four persons of the locality interested in the field of education which may include the donor donating rupees fifty thousand or more, if any, one person from the Scheduled Tribe/Scheduled Caste community and one woman shall be nominated by the President of the Governing Body to be members of the Governing Body.

(2) The constitution of the Governing Body and any change in the membership shall be intimated by the Secretary of the Governing Body to the Director.

(3) The Director, on receipt of the intimation from the Secretary may either approve the list or suggest change with reasons within thirty days from the date of its receipt. If no communication is received from the Director, Secondary Education in this regard within a period of thirty days, it shall be deemed to have been approved :

Provided that change, if any, suggested by the Director, shall be considered by the President of the Governing Body who shall re-submit the list either accepting the change or not, to the Director within 15 days from the date of receipt of the communication after which the Director shall approve the same :

Provided further that no meeting of the Governing Body convened during the intervening period (from-the date of intimation till the date of final notification by the Director) shall be invalid for the reason of any vacancy in membership or any defect in the constitution of the Governing Body."

4. The word "education" is derived from the Latin word "educa" which means bringing out a latent faculties. The New Oxford Illustrated Dictionary, Vol. 1 gives its meaning as one who studies the science and methods of education. According to Oxford English Dictionary "educationist" means one who makes a study of science or methods of education, an advocate of education. In Oxford English Dictionary Vol. III, meaning of "educationist" is mentioned as specialist in theories and methods of education. In Chambers 20th Century Dictionary, meaning of the said expression is a person skilled in methods of education or teaching; one who promotes education. Both "education" and "educationist" are terms of noun. "Education" means the act or process of imparting or acquiring general knowledge, developing the powers of reasoning and judgment, and generally of preparing oneself or others intellectually or mature life; the act or process of imparting or acquiring particular knowledge or skills. It is the result produced by instruction, training or study. Thus the word has very wide import. The expression "person interested in the field of education" as appearing in the old Rules had been replaced by the expression "eminent educationist" in the new Rules, and again change has been brought in restoring the original position. In Rule 25 both "eminent educationist" or "interested in the field of education" find mention. So far as nomination of four members of the locality is concerned, it is

to be made in respect of persons interested in the field of education. Obviously, therefore, the "person interested in the field of education" is conceptually different from one who is an "eminent educationist". This distinction appears to have been kept in view by the rule making authority.

5. As a prelude, the importance of education may be set out.

6. The immortal Poet Valluvar whose Tirukkural will surpass all ages and transcend all religions said of education :

"Learning is excellence of wealth that none destroy, to man nought else affords reality of joy."

7. Therefore, the importance of education does not require any emphasis.

8. The fundamental purpose of Education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit. Education is a preparation for a living and for life, here and hereafter.

9. An old Sanskrit adage states : "That is Education which leads to liberation" -- liberation from ignorance which shrouds the mind; liberation from superstition which paralyses effort, liberation from prejudices which blind the Vision of the Truth.

10. In the context of a democratic form of Government which depends for its sustenance upon the enlightenment of the populace, education is at once a social and political necessity. Even several decades ago, our leaders harped upon universal primary education as a desideratum for national progress. It is rather sad that in this great land of ours where knowledge first lit its torch and where the human mind soared to the highest pinnacle of wisdom, the percentage of illiteracy should be appealing. Today, the frontiers of knowledge are enlarging with incredible swiftness. The foremost need to be satisfied by our education is, therefore, the eradication of illiteracy which persists in a depressing measure. Any effort taken in this direction cannot be deemed to be too much.

11. Victories are gained, peace is preserved, progress is achieved, civilization is built up and history is made not on the battle-fields where ghastly murders are committed in the name of patriotism, not in the Council Chambers where insipid speeches are spun out in the name of debate, not even in factories where are manufactured novel instruments to strangle life, but in educational institutions which are the seed-beds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up, statesmen and soldiers, patriots and philosophers, who will determine the progress of the land.

12. The importance of education has come to be recognised in various judicial decisions.

13. In *Oliver Brown v. Board of Education of Topeka* (O. S. Supreme Court Reports (1953) 98 LEd 873 at page 880) it was observed :

"Today, education is perhaps the most important function of State and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is very foundation of good citizenship. Today it is principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."

These aspects have been highlighted in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*,

14. Education is enlightenment. It is the one that lends dignity to a man as was rightly observed by *Gajendragadkar, J.* (as he then was) in *University of Delhi and Another Vs. Ram Nath*,

"Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development."

15. Article 26 (1) of the Universal Declaration of Human Rights states :

"Everyone has the right to education, technical and professional and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

16. In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, the Apex Court held that the right to life guaranteed by Article 21 does take in "educational facilities". Having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of the Apex Court, it was held, agreeing with the statement in *Bandhua Mukti Morcha*, that right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. Without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail. We do not think that the importance of education could have been better emphasised than in the above words. The importance of education was emphasised in the "Lathishatakam" by Bhartruhari (First Century B.C.) in the following words :

"Translation:

Education is the special manifestation of man; Education is the treasure which can be preserved without the fear of loss;

Education secures material pleasure, happiness and fame;

Education is the teacher of the teacher;

Education is God incarnate;

Education secures honour with hands of the State, not money.

A man without education is equal to animal."

The fact that right to education occurs in as many as three Articles in Part IV, viz. Articles 41, 45 and 46 shows the importance attached to it by the founding fathers. Even some of the Articles in Part III, viz. Articles 29 and 30 speak of education.

17. In *Brown v. Board of Education* (1953) 98 LEd 873 Earl Warren, C.J. speaking for the U.S. Supreme Court emphasised the right to education in the following words :

"Today, education is perhaps the most important function of State and local Governments..... It is required in the performance of our most basic responsibilities, even service in the armed forces, it is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

In *Wisconsin v. Yoder* (1972) 32 LED 15 the Court recognised that:

"Providing public schools ranks at the very apex of the function of a State."

The said fact has also been affirmed by eminent educationists of modern India like Dr. Radhakrishnan, J.P. Naik, Dr. Kothari and others.

18. It is stated by the petitioners that Ramachandra has read up to Class VII. He has no contribution for upliftment/development of any educational institution. Further his nomination is detrimental to the interest of the institution. He is involved in serious crimes and has been implicated in many criminal cases pending before appropriate Courts for adjudication. Reference is made to an alleged outraging modesty of a women and attempted to commit rape on her in respect of which P.S. case no. 72 of 1997 has been instituted. Though notice has been served on Rama Chandra Mohapatra (opposite party no. 3), he has chosen not to appear and contest. Therefore, the allegations go unrefuted.

19. It is submitted by the learned Addl. Government Advocate that many times false cases are foisted on account of political personal rivalries.

20. 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.

21. It is to be noted that the real purpose of nominating a person interested in the field of education 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, more particularly when it is the State Government should steer-clear of all sorts of controversies.

22. 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.

23. In the background of fact situation described above, nomination of Ramachandra appears to be not in the interest of the institution, as all relevant aspects do not appear to have been considered by the authorities. The original file relating to nomination of Ramachandra was produced before us. It is noticed that nomination as President of Governing Body of various colleges was recorded. The only observation made reads as follows :

"The following persons are nominated as the President of the G.B. of the College whose terms have been expired. The persons nominated as below except tick marks are persons interested in the field of education."

The underlined portion has been written by hand. The tick-marked cases were those where there is mention that "To be discussed with CM". To a query, learned Additional Government Advocate answered that there is nothing on record to show as to on what basis the Minister concluded that the persons named in the order are persons interested in the field of education". There is no material and/or discussion in the file in that regard.

24. The order dated 21-11-1997 (Annexure 2) by which Rama Chandra was nominated is quashed to the aforesaid extent. The writ application succeeds. No costs.

P.C. Naik, J.

25. I agree.