

(1991) 06 OHC CK 0040
In the Orissa High Court
Case No : O.J.C. No. 853 of 1991

Prafulla Mishra and Another		APPELLANT
	Vs	
State of Orissa and Others		RESPONDENT

Date of Decision : 17-06-1991

Acts Referred:

Orissa Education (Management of Private Colleges) Rules, 1979 — Rule 3, 4, 4(3), 5(4)

Citation : (1991) 2 OLR 232

Hon'ble Judges : S.C. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : S.C. Dash, B.K. Patnaik, R. Ch. Rout and R. Ch. Mohanty, for the Appellant; P.K. Mohanty, Additional Government Advocate and B.B. Mohanty, (for O. P. Nos. 3 and 4), for the Respondent

Judgement

S.C. Mohapatra, J.—This is an application under Art. 226 of the Constitution of India assailing exercise of power by the Director, Higher Education, Orissa under Rule 4 (3) of the Orissa Management of Private Colleges Rules, 1979 (hereinafter referred to as "the Rules") made u/s 27 of the Orissa Education Act, 1969 (hereinafter referred to as "the Act") by approving reconstitution of the Governing Body of Angul Mahila Mahavidyalaya (hereinafter referred to as "the College"). Office order dated 26-12-1990 (Annexure-1) on basis of the list submitted by President of the Governing Body (opp. party No. 4) in his letter dated 3 -6-1990 (Annexure-3),

2. According to petitioners, College was established and was recognised in the year 1979, It had a governing body with the Subdivisional Officer, Angul as its President. Although the governing body had been reconstituted from time to time, it had never been approved by the prescribed authority under the Act and the rules made thereunder. Thus, the governing body first constituted is continuing to exercise the powers and carry on the functions as provided under the Act and "Rules, Petitioner No. 1, a member of the Legislative Assembly was functioning as the Secretary of the Governing Body. On 13-11-1988, the

governing body passed a resolution under the Presidentship of the Subdivisional Officer, for reconstitution of the governing body as it was learnt that the College was going to receive grant-in-aid. On confirmation of the resolution in the meeting dated 13-4-1989 held under the Presidentship of the Subdivisional Officer, petitioner No. 1 addressed a letter on 12-6-1989 (Annexure-2) to the Director for approving the governing body attaching copies of both resolutions. No action was, however, taken by the Director. On 12-4-1990, Director addressed letter No. 22582 to the President on basis of which President submitted a list of persons for reconstitution of Governing Body of the College in his letter dated 30-6-1990. On that basis, the Director approved the reconstitution of the Governing Body in exercise of power under Rule 4(3) read with Rule 3 (3) of the Rules. Petitioners alleged that the Director (opp. party No. 2) and the Sub-Collector (opp. party No. 4) acted under political influence.

3. On behalf of the Governing Body and the President, Principal of the College has filed a counter affidavit, While not disputing that on the basis of resolution dated 13-11-1988 confirmed on 13-4-1989, petitioner No. 1 requested the Director to reconstitute the governing body in his letter dated 12-6-1989, allegation of political influence has been denied. It has been asserted that President is the authority under the Statute to send the list on the basis of which Director is to exercise power under Rule 4(3) of the Rules and accordingly, Director has validly approved the reconstitution of Governing Body.

4. Rule 4 of the rules which is the basis of exercise of power, both by the President of the Governing Body as well as the Director reads as follows :

"4. Procedure for constitution and approval of the Governing Body-

(1) Not less than ninety days prior to the date of expiry of the term of the members, other than ex officio members, the Director shall call upon the President of the Governing Body to furnish proposal for constitution of the Governing Body for the next term in respect of Colleges mentioned under Sub-rules (2) and (3) of Rule 3.

(2) The President of the Governing Body shall, notwithstanding whether called upon by the Director to do so or not, furnish proposal for constitution of the Governing Body, for the next term to the Director atleast thirty days prior to the date of expiry of the term of the members other than the ex officio members.

(3) If proposals are received within the due date, the Director shall consider the same and shall either accord his approval to the said proposals or substitute any of the" nominated members, other than the ex officio of ones, of the Governing Body after recording reasons for doing so :

Provided that no such substitution shall be made by the Director in respect of members nominated by the Charitable Trust ."

Provided further that no member nominated- by the Vice- Chancellor or the Administrator, as the case may be, in pursuance of Clause (e) or by the President

in pursuance of Clause (f) of Sub- rule (3) of Rule 3 shall be so substituted without consulting the Vice- Chancellor, the administrator or the President as the case may be)".

5. The college is in receipt of aid from State Government with effect from 1-6-1988. Accordingly, composition of Governing Body is governed under Rule 3(3). Under this provision, Collector or Additional District Magistrate or Sub-divisional Officer (since re designated as Sub- Coliector) nominated by the Collector is to be President. Principal is to be ex officio Secretary. Chairman of the Notitied Area Council is an ex officio member. Two members of the teaching staff elected from among themselves in accordance with Rule 3 (5) are members. Added to them not less than seven and not more than nine members are to be nominated by the President, they shall be from among prominent persons of the locality interested in the field of education which shall include the local Member of Parliament and Legislative Assembly, donors and persons who otherwise contributed for development of the collego. Thus, nomination of President is confined only to five or seven persons only keeping the guideline that those five or seven persons nominated include donors and persons who otherwise contributed to the development of the college and prominent persons of the locality interested in the field of education.

6. Since proposal of the President requires approval of the Director under Rule 4 (3) Director is to examine the guidelines of Rule 3(3) in respect of the persons nominated by the President. Therefore, President has to clearly indicate the category under which a person is nominated by him If this is not indicated, Director would have no scope to consider whether requirement of Rule 3(3) is satisfied. Where he would not be satisfied or where he finds a better person than the one nominated by the President, he may substitute such name under the powers vested on him in Rule 4(3)

7. Annexure-3 is the proposal. Names in serial Nos. 9 to 15 are the nominees of the President. That part of Annexure-3 reads as follows :

"1 to 8 xx xx 9. Sri Shakti Prasad Patnaik, Amalapara, Angul. Member 10. Sri Sujit Nanda, Hukurisingha, Angul. Member 11. Sri Priyadarsi Patnik, Amalapara, Angul. Member 12. Sri Ajit Kumar Bisoi, Amalapara, Angul. Member 13. Dr. Pratap Kumar Singh At/Po Cotamara, Angul. Member 14. Sri Kulamani Sahoo, At/ P.O. Bonda, Via-Banarpal, Angul. Member 15. Sri Suresh Chandra Sahoo, At/ P.O. Tubey, Angul. Member

In Annexure-3 there is no mention as to who is donor, person otherwise contributed to the development of the college or prominent person of the locality interested in the field of education. In the counter affidavit filed on behalf of the President also the position has not been clarified. There is no assertion that these persons are known to the Director earlier. Order of the Director (Annexure-1) is only a copy of the list in Annexure-3 where a few changes have been made. In place of Collector or his nomigee as President, Collector has been approved to be

the President. In place of Principal as. Secretary, Principal in-charge has been substituted. There is no indication as to why persons in serial 9 to 15 have been accepted.

8. In a decision of this Court reported in 59 (1983) CLT 319 (Achyutananda Behera v. State of Orissa and Ors.) an order of transfer was assailed to be mala fide since it was made at the behest of a Member of the Parliament. Discussing role of an elected representative of people in State administration it was observed:

"...Much of the bane of the present administration is due to the breach of the rule; due to politicisation of administration, interference of politicians in matters of transfer, investigation and arrest of offenders etc."

What has been stated in 1985 has not been changed now. It is true that the Court would not presume that statutory exercise of power by executive officers is overshadowed by political interference merely on allegation of the same. Where, nowever, such allegation is made, howsoever vague it may be, public officers discharging statutory and other administrative functions who are accountable for their action or inaction and when questioned or mala fides attributed, not being satisfied merely by denying the mala fides attributed, specially when the proposal or order is not supported by reason.

9. The basis of proposal of the President is within his special knowledge. President holds a public office. When he sent the proposal, he is supposed to make a study of the situation. If he would have made a slight probe, he would have found that there are two resolutions of the Governing Body, one dated 13-11-1988 and the other dated 13-4-1989 under the Presidentship of his predecessor another public officer. Ha mast have some reason to discard the names indicated in the resolution. If he has not seen them, proposal sent by him is not reasonable as relevant materials were not considered, if ha has considered the same and was not able to accept the names, he should have explained the position to this Court. Absence of explanation which is within special knowledge of the President may give rise to a presumption that either he has no explanation to offer or explanation if given would not support his proposal.

10. Although I am not inclined to accept vague assertion of mala fide on account of political interference, I am not able to accept the names propose of by the President in absence of a clear picture about the reason why those names have been proposed. Order (Annexure-1) also suffers from the same infirmities and cannot be accepted. Accordingly, both Annexure-3 and Annexure-1 are declared invalid and reconstitution of Governing Body on that basis is vacated. I may only observe that petitioner No. 1 was at one time a Member of Legislative Assembly. He should have made specific statement so that people for whose cause he fights would respect the office he held. He should have remembered that reckless vague assertions against persons holding office administration or otherwise destroy image of the office and people lose confidence in the persons holding

such offices. It affects governance of the republic by rule of law which is the basic object of our Constitution.

11. By vacating the reconstitution, Rule 5 (4) of the rules operates. It reads as follows ;

"5. (1) to (3) xx xx (4) If for any reason, the Governing Body has not been reconstituted and the term of the old Governing Body has expired as prescribed in sub-rule/(1), the old Governing Body shall be deemed to be in office until the new Governing Body comes into office :

Provided that the provisions of this sub-Rule shall not apply to the case where a Governing Body has been reconstituted under the proviso to Sub-section (1) of Section 11 of the Act".

12. By operation of Rule 5(4), the Governing Body which was constituted first in or about the year 1979 when the college was established and recognised under the Act shall be deemed to be in office since subsequent reconstitutions were not approved under Rule 4(3). Admittedly, term of the Governing Body has expired. Language of Rule 4(1) using the term. "Not less than ninety days prior to the date of expiry of the term of the members other than the ex-officio members" clearly indicates that time is intended to be essence of exercise of the power. After the time fixed Director has no power to call for proposal. Time of thirty days prior to the date of expiry of the term in Rule 4(2) also leads to the same conclusion. Thus, Director cannot accept any proposal sent after the expiry of the period. u/s 11(1) proviso before 14-8-1989 when the same was substituted, Director had power to reconstitute Governing Body. That provision is no more available. Section 7-A (3) as inserted by Act 15 of 1989 provides that during the period intervening expiry of the term of a Governing Body and its reconstitution the powers and functions of the Governing Body shall be exercised by such person or persons as the prescribed authority appoints. u/s 11(4) which was similar to Section 7-A (3) Director was vested with power to appoint person or persons which has now been changed to prescribed authority. As yet no rule has been made providing prescribed authority for exercise of power u/s 7-A (3) of the Act as amended by Act 15 of 1989. No sooner power u/s 7-A (3) is exercised, provision under Rule 5 (4) ceases to operate. In such a situation there is no option than to declare that the first Governing Body shall be deemed to be in office.

13. It is true that Rule 1(3) operates only after exercise of power under Rule 4(2). Rule making authority has made no clear provision to meet a situation where President does not discharge his obligation under Rule 4(2). Section 11(1) proviso is no more in statute book. Rule 5(4) is only a provision so that Sec, 7(1) is not defeated. It is not the intention of legislation that a body whose term has expired would continue in office or in exercise of power u/s 7-A (3) after 14-8-1989 when person have been appointed by prescribed authority they will continue to discharge function of the Governing Body to be changed by the

prescribed authority. When legislative intention as reflected in Section 7 is that a private college shall have a Governing Body which shall be responsible for proper management of the institution, a provision has to be spelt out from the rules so that legislative intention is given due respect. All endeavour is to be made for working of the legislation in accordance with legislative intention than arresting the process at any stage which would defeat the object of legislation unless there is no other alternative than such interpretation.

14. Rule .4 (3) vests power in the Director to substitute nominee proposed by President under Rule 4 (2). Even after reconstitution of the Governing Body of a college in respect of aid, Director has power to substitute on his own motions any nominee if he considers it expedient in interest of the institution after following the principle of natural justice as laid down in Rule 5 (1). This substitution is however, possible prior to expiry of term of such member Such member is to continue for residue of the term as provided in Rule 5(5). Governing Body is to act- in meetings. Under Rule 7 (3) five members constitute the quorum. Out of 13 or 15 members composing the Governing Body under Rule 3 (3) seven are members because they hold some office and some of them are ex officio members Nominee of Vice-Chancellor if added the number becomes eight. They are ;

- (a) President
- (b) Secretary
- (c) Two representatives of the teaching staff
- (d) Nominee of Vice-Chancellor
- (e) Member of Parliament and
- (f) Member of Legislative Assembly

Hence, Director having some scope for selection of the other nominees of the President for effective constitution of the Governing Body where President does not propose such names within the scheduled time under Rule4(2), Director should be interpreted to have power to nominate such members keeping the guidelines indicated in Rule 3 (3) remind. In such" a case, to curtail arbitrariness of the Director or to avoid chance of external influence or other extraneous cause, Director should give his reasons why he nominated a particular person.

15. Apparently the aforesaid interpretation looks like the Court exceeding its jurisdiction as normal notion is that Court while interpreting a statute cannot add or substitute any language. However, this position has- been made clear in the decision reported in Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri, where it has been laid down that Courts can add to the plain language those words which cart clarify the intention of the legislature. Under the Act and the rubs legislative intention being that members of the Governing Body other than ex officio members should continue for a term as fixed under Rule 5 (1) and

ad hoc arrangements u/s 7 A (3) as well as Rule 5 (4) having been made for exercise of power or Governing Body for short term, interpretation of Rules 4 and 5 to have the Governing Body with- members nominated by the Director would clarify the intention of the rule making authority. It is not in violation of the principles of Statute. However, it is desirable that State Government takes up the question of amendment of the rules so that the same can meet all situations as can be envisaged

16. Before concluding, I cannot but express that persons placed in positions and offices to discharge statutory obligations under the Act and the rules are deficient in rendering services for which they are paid. Laudable object of the Act to provide for better organisation and development of educational institutions is frustrated. When education is affected, social structure is impaired. One illustration of inaction in this case may be pointed out. Order of Director (Annexure-1) indicates that deponent of the counter affidavit is Principal in charge. A college is to have a Principal. Only a Principal can be Secretary. Any person discharging day to day function of the Principal for short period -without being remunerated for the same is not Principal. Person holding such office has many statutory powers. If rule of law is to be respected, all attempt should be made so that the college shall have a Principal. Power is not wanting in that regard. State Government can transfer a person to be Principal. Governing Body can request for deputation of an employee to be Principal. It can appoint a Principal on ad hoc for a period not exceeding three months. With much elaborate provisions so that an important office is not kept vacant, there is no justification why the college should have a Principal in charge only even after two years of its receiving grant-in-aid. It is doubtful "whether a Principal in charge can be the Secretary where rules require that Principal shall be the Secretary.

17. In conclusion :__

(a) Proposal by Sub-Collector (Annexure-3) and order of reconstitution (Annexure-1) by Director are invalid.

(b) First Governing Body constituted in 1979 or near about shall be deemed to be in office under Rule 5 (4).

(c) Director shall nominate seven persons and reconstitute the Governing Body.

(d) Authorities shall take steps for appointment of a Principal at an early date.

18. In the result, writ, application is allowed to the extent indicated above. No costs.

J.M. Mahapatra, J.

19. I agree.