

(1989) 04 OHC CK 0010

In the Orissa High Court

Case No : O.J.C. No's. 2604 of 1986 and 3695 of 1987

Purna Chandra Meher

APPELLANT

Vs

District Inspector of Schools, Bolangir Education District and
Another

RESPONDENT

Date of Decision : 10-04-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Education (Management of Private Schools) Rules, 1980 — Rule 3, 9A
Orissa Education Act, 1969 — Section 27

Citation : AIR 1989 Ori 243

Hon'ble Judges : V. Gopalaswamy, J; D.P. Mohapatra, J

Bench : Division Bench

Advocate : M.K. Mallick, for the Appellant; M.R. Mohanty, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—These two writ petitions were taken up together with consent of learned counsel for the parties since the disputes raised in both the cases relate to the same matter and the case involves common questions of facts and law. While OJC No. 2604 of 1986 has been filed by Purna Chandra Meher who was elected as Secretary of the Managing Committee of the School OJC No. 3695 of 1987 has been filed by all the non-official members of the said committee except one. In the former case the letter dt. 21-8-86 of the District Inspector of Schools, Bolangir to the Headmaster Agalpur M.E. School complaining about the selection of Purna Chandra Meher as the Secretary of the School and the letter of the said date of the District Inspector of Schools to Purna Chandra Meher that as he has not been approved by the Government as Secretary of the School he should not style himself as such in his correspondence, are under challenge; in the latter case the office memo dt. 12th of Nov. 1987 of the District Inspector of Schools, purporting to communicate cancellation of approval of the members of the Managing Committee of the School is assailed. The District Inspector of

Schools, Bolangir is the sole opposite party in O.J.C. No. 2604 of 1986 and opposite party 2 with the Director, Elementary and Adult Education, Orissa in O.J.C. No. 3695 of 1987.

2. The facts relevant in the case may be stated thus : --

The institution in question, Agalpur M.E. School in the district of Bolangir, is an aided educational institution coming under the purview of the Orissa Education (Management of Private Schools) Rules, 1980 (for short "the Rules"). No nomination of members for reconstitution of the committee having been made by the erstwhile Managing Committee of the School before 14-11-81 the Managing Committee was treated as defunct and management of the School was assumed by the District Inspector of Schools since 4-8-82. As provided in Rule 3(3), Second Proviso read with Rule 9-A of the Rules, the District Inspector of Schools took steps to constitute the Managing Committee for the School. He proposed names of the petitioners and one Prafulla Kumar Beheru as the seven non-official members of the Committee, by Memo No. 3105 dt. 20-5-86 (Annexure 2 in O.J.C. 3695/1987) the District Inspector declared that in pursuance of Sub-rule (4) of Rule 9-A of the Orissa Education (Management of Private Schools) Amendment Rules, 1982 the Managing Committee of Agalpur M.E. School is hereby constituted with the aforesaid seven members till a new Managing Committee is constituted as per rule and duly approved by the proper authority. In the said office memo it was further stated that the Headmaster of the institution will convene the first meeting of the Managing Committee and after election of the President and the Secretary the Committee will constitute a new Managing Committee. In pursuance of the said office memo a meeting of the Managing Committee was convened by the Headmaster on 30-5-86 under the president ship of petitioner 1, Ugrasen Meher. In the minutes of the said meeting the names of all the eleven members of the Managing Committee were given and from the list it appears that in addition to the seven non-official members mentioned in the office memo of the District Inspector Purna Chandra Meher, Sarpanch, Rabi Sankar Mohapatra, a Government servant, Subal Panda, teachers' representative and Hirachand Meher, Headmaster were taken in as members of the Committee. The resolution passed in the meeting reveals that at the said meeting Ugrasen Meher and Purna Chandra Meher were elected as the President and Secretary respectively. A copy of the Resolution passed at the said meeting held on 30-5-86 was sent to the District Inspector. On receiving the copy of the said Resolution the District Inspector in his letter dt. 21-8-86 (Annexure 4 in O.J.C. No. 3695 of 1987) wrote to the Headmaster that Purna Chandra Meher has not been nominated as a member of the Managing Committee as will be seen from the Memo No. 3106 dt. 20-5-86. Evidently he has been taken as an ex officio member in his capacity as Sarpanch of Agalpur Grama Panchayat. The objection of the District Inspector regarding election of Purna Chandra Meher as Secretary was expressed in these words :

".....Generally the Sarpanches of Grama Panchayats are sanctioning funds for

the repair, improvement of aided schools and the grants are being paid through the Secretary of the concerned Managing Committee. In this case if Shri P.C. Meher will act as Secretary then he may grant money in the capacity of Sarpanch of Agalpur Grama Panchayat in one hand and will receive the same in the capacity of Secretary of Managing Committee of Agalpur M.E. School in other hand. So it will not be wise to handle the cash by one person of both the offices so far as G. I. A. is concerned. As such you are advised to elect another eligible member as Secretary of the Managing Committee of Agalpur M.E. School and send the copy of Resolution, willingness and other documents for consideration to accord approval.

In this connection please note that the Sarpanches are the regular members of the Managing Committee. So you should see that the notice of the Managing Committee meeting is duly served on him to attend the meeting....."

On the same day, the District Inspector addressed a letter to Purna Chandra Meher (Vide Annexure 5 in O.J.C No. 3695 of 1987) that he should not style himself as Secretary of the Agalpur M.E. School since he has not yet been approved by Government. Thereafter on 21-8-86, probably after coming to know about the objection taken by the District Inspector, Purna Chandra Meher addressed a letter to the said authority (vide Annexure 9 in O.J.C. No. 2604 of 1986) stating, inter alia, that there is no prohibition for the Managing Committee to elect him as the Secretary and the grounds stated in the letter of the Dist. Inspector are neither legal nor reasonable. Then followed the impugned order, the office memo dt. 12th Feb., 1987 wherein the Dist. Inspector declared that approval of the members of the Managing Committee of the School issued vide office memo No. 3105 dated 20-5-86 was cancelled. It appears from the office memo that this was done in pursuance of the letter No. 26697 dt. 26-10-87 of the Director, Elementary and Adult Education, Orissa.

3. The office memo of the District Inspector of Schools communicating cancellation of approval of the members of the Managing Committee is challenged mainly on the grounds that neither the Inspector nor the Director was vested with any power under the Rules to cancel the approval accorded earlier and further that the decision having been taken without giving any opportunity of hearing to the members concerned was bad on account of non-compliance with the principle of natural justice. Regarding the objections taken by the Dist. Inspector to the election of Purna Chandra Meher as Secretary of the School the main contention is that there is no bar in the Rules or in any executive instructions issued by the competent authority against election of Sarpanch as Secretary of the Managing Committee. It is worth noting here that the Dist. Inspector in his communication accepted without any objection the Sarpanch Purna Chandra Meher to be a member of the Committee.

4. The Dist. Inspector of Schools in his counter filed in O.J.C. No. 3695 of 1987 has stated, inter alia, that at the initiation of the process of constitution of a new Managing Committee a panel of names including those of the petitioners was

sent to the Director of Elementary and Adult Education for approval as per the requirement of the Rules and upon receipt of the approval from the Director, the Headmaster of the School was intimated about the same. In the meantime on receipt of objections the matter was reviewed and ultimately the Director issued the order cancelling the approval accorded earlier and thereafter the intimation was sent to the District Inspector. The other stand taken by the District Inspector in the counter affidavit is that the other four members of the Committee, excluding the seven non-official members, whose induction to the Committee was approved by the Director were not selected by him and therefore they could not be taken as duly nominated members of the Committee and consequentially the Committee could not have been taken as a duly constituted one. The Dist. Inspector has taken exception to the action of the Headmaster in calling the first meeting of the Managing Committee on 30th May, 1986 without waiting for intimation from him about the nominated members. Regarding the Sarpanch Purna Chandra Meher, the only objection taken in the counter affidavit is that since he was not duly nominated as a member of the Committee he could not have been elected as Secretary of the Committee. It is to be noted here that this stand is clearly different from the stand taken by the District Inspector in the earlier communication wherein he admitted the Sarpanch Purna Chandra Meher to be a member of the Managing Committee but objected only to his election as Secretary of the School. The District Inspector has not stated anything in the counter affidavit about the reason that impelled the Director to cancel approval accorded by him to the members of the Committee. He has not also denied that before passing the order of cancellation no notice was given to the members concerned.

5. Before proceeding to consider the merits of the respective cases of the parties it will be convenient to discuss the provisions of the relevant Rules. Rule 3 of the Orissa Education (Management of Private Schools) Rules, 1980 deals with constitution of Managing Committee. Sub-rule (3) of the said rule provides that the Managing Committee of a private school receiving minimum of full grant-in-aid from Government shall consist of eleven members, namely : --

(a) the Headmaster of the School in his ex officio capacity; (b) a teacher representative elected by the entire teaching staff of the School; (c) two persons as provided hereunder to be nominated by the Inspector in case of a High School and by the District Inspector in case of a Middle School in consultation with the Sub-Divisional Officer concerned-- (i) the Sarpanch of the Gram Panchayat or a member of the Municipal Council or the Notified Area Council as the case may be; and (ii) one employee of the State or the Central Government; (d) Seven other members to be nominated by the outgoing Managing Committee, out of which one shall be a donor, two shall be from among guardians of the students, two shall be educationists or those interested in the field of education, one from minority community and one from Scheduled Caste or Scheduled Tribe. Under the first proviso to Sub-rule (3) it is laid down that where the required number of person or persons from any of the categories are not available, the vacancy or

vacancies may be filled up by nomination from among persons belonging to any other category. The third proviso to the said Sub-rule provides that in case of a defunct Managing Committee the Inspector in case of a High School and the Dist. Inspector in case of a Middle School shall nominate these seven members subject to approval of the Director. It is provided in Sub-rule 3(ii) that on constitution of the Managing Committee in the aforesaid manner, the Members shall elect from among themselves a President and a Secretary, of the Managing Committee each of whom shall be one other than the Headmaster or the teacher representative of the School and under Clause (iii) it is laid down that the Headmaster of the School shall be ex officio Joint Secretary of its Managing Committee and shall perform such of the duties of the Secretary as may be assigned to him by the Managing Committee. He shall perform the duties of the Secretary in the event of continued absence and during casual vacancies by death, resignation or removal of the Secretary, Sub-rules (4) and (5) of Rule 3 make provision regarding disqualifications relating to the office of the member and Secretary of the Managing Committee. For the present purpose it is relevant to note that the only limitation for holding the office of Secretary of the Managing Committee is that no person who is the Secretary of the Managing Committee of one educational institution shall be Secretary of another educational institution and no Secretary of any Managing Committee shall continue for more than two terms. Under Sub-rule (6) of Rule 3 it is provided that a Managing Committee of a School constituted in accordance with these rules shall continue in office for the full term of three years notwithstanding any change of its character in relation to receipt of grant-in-aid during the continuance of its term. Rule 4 deals with procedure for constitution and approval of the Managing Committee. This provision is not very relevant for the present purpose since admittedly the erstwhile Managing Committee of the School was taken to be defunct and the matter relating to reconstitution was dealt with on that basis. It may however be noted that under Sub-rule (3) of Rule 4 it is provided that when the proposal is submitted (by the outgoing Managing Committee) after reconsideration as provided under Sub-rule (2) in respect of Managing Committee of Schools in receipt of grant-in-aid from Government, the Inspector or the District Inspector, as the case may be, shall consider the same and shall either accord his approval thereon or substitute any of the members other than the ex officio members of the Managing Committee. Thereafter the Inspector or the District Inspector, as the case may be, shall nominate other members as provided under these rules and approve the Managing Committee. The Managing Committee shall be deemed to have been duly constituted with effect from the date of issue of the orders approving the same. Rule 6 deals with term of office of the members of the Managing Committee. Sub-rule (2) of the said rule provides that if for any reason the Managing Committee constituted under these rules, has not been reconstituted before the expiry of its term as provided in Sub-rule (1) it shall be deemed to continue in office until the new Managing Committee assumes office; provided that the Managing Committee shall not continue after expiry of its term for more than six months and that the function of the Managing Committee shall

thereafter vest with the Inspector or the District Inspector as the case may be. Rule 9-A, provides that notwithstanding anything contained in these rules, in case of a defunct Managing Committee, the powers and functions of the Managing Committee shall be exercised by the Inspector in case of a High School and District Inspector in case of a Middle School till the Managing Committee is constituted in accordance with law.

6. From the provisions of the rules discussed above, it is clear that in the present case since the matter was processed on the basis that the Managing Committee of the School was defunct the District Inspector was to recommend names of seven non-official members for approval by the Director. In exercise of that power the Dist. Inspector suggested the names of the petitioners and one Prafulla Kumar Behera and the Director accorded approval to these persons to be members of the Committee. Thereafter, as required in the rules, the District Inspector was to nominate two persons, the Sarpanch of the Gram Panchayat and one employee of the State or the Central Government, include the Headmaster of the School in his ex officio capacity and a teacher representative elected by the teaching staff of the School and then approve the Managing Committee with eleven members. From the counter affidavit filed by the District Inspector, it appears that the sole basis for his contention that there was no duly elected Managing Committee comprising of the petitioners as members was that there was no normal declaration by him specifying the eleven members of the Committee. But the position appears to be beyond controversy that the Director who was the competent authority to do so, approved the seven non-official members of the Committee; while communicating the approval of the Director the District Inspector clearly instructed the Headmaster to proceed to convene the first meeting of the Committee in which a President and a Secretary were to be elected by the members and on getting the copy of the Resolution of the first meeting of the Managing Committee wherein the names of the eleven members of the Committee were set out and election of the President and the Secretary was stated, the only objection raised by the District Inspector was that though the Sarpanch, Puma Chandra Meher could be taken in as a member of the Committee he should not be elected as its Secretary. Further, the District Inspector suggested in his communication to the Headmaster that somebody else other than Puma Chandra Meher should be elected as Secretary and intimation should be sent to him. These actions on the pan of the District Inspector clearly go to indicate that he had accepted the Managing Committee of the School to have been duly constituted and on constitution of the Managing Committee he had instructed the Headmaster to convene the first meeting in which the members were to elect from among themselves a President and a Secretary. In this view of the matter, the subsequent stand taken by him that he had not nominated the Sarpanch to the Managing Committee appears to be an afterthought, it is relevant to note here that the District Inspector has taken the stand that objection was received from a member of the Committee that the first meeting was scheduled to be held on 29-5-86 and was later changed by the

Headmaster to 30th May, 1986 by interpolating the date. This objection even if accepted will only render the election of the President and the Secretary which took place in the meeting on 30th May, 1986 invalid. It will not affect the constitution of the Committee.

7. Another point that arises for consideration is whether the order of the Director communicated by the District Inspector cancelling the approval of the Managing Committee is sustainable. In view of our finding that the Managing Committee of the School was duly constituted it has to be held that its members were entitled to continue in office for the term specified in the rule. Any order prematurely terminating their term of office adversely affects their right to office and therefore prejudices them. In the absence of any provision in the rule that the principle of natural justice will not apply it has to be held that the said principle will be applicable to the case. In view of the uncontroverted position that no notice was served on the petitioners and other members before the order of cancellation of approval was passed the conclusion is inescapable that the order was vitiated due to non-compliance with the principle of natural justice. In view of this finding it is not necessary for us to go into the other contention raised on behalf of the petitioners that the Director had no power at all to cancel his earlier order of approval since there is no provision in the rule vesting such power in him.

8. The objection relating to election of the Sarpanch Puma Chandra Meher as Secretary of the Managing Committee of the School is clearly unsustainable since as noticed earlier there is no provision in the rule disqualifying a Sarpanch, a nominated member of the Committee to be elected as Secretary. The reason that as the Sarpanch he is the granting authority of funds for development of the School and will become the receiving authority as Secretary of the Managing Committee is not an objectionable situation contemplated under the Rules. No attempt has also been made on behalf of the opposite parties to support the above ground of objection.

9. Before concluding we would like to note a few relevant facts. In O.J.C. No. 2604 of 1986 by order dt. 1-12-86 in Misc. Case No. 3724 of 1986 this Court, as an interim measure, directed that the petitioner Puma Chandra Meher shall continue as Secretary of the Managing Committee of the Agalpur M.E School so long he continues as Sarpanch of Agalpur Gram Panchayat and he is not otherwise removed. Similarly, in O.J.C. No. 3695 of 1987 by order dt. 24-12-87 in Misc. Case No. 5067 of 1987 this Court directed interim stay of operation of Annexure 6 (order of cancellation of approval) until further orders and the said order of interim stay was directed to continue by order dt. 24-6-88. In pursuance of these orders the Managing Committee has been functioning till now.

10. On giving our anxious consideration to the facts and circumstances of the case and the orders passed by the District Inspector and the Director from time to time as discussed above, we are unable to accept the contention raised on behalf of the opposite parties that there was no validly constituted Managing

Committee of the School by 30-5-86 when the first meeting of the Committee was held. We are also of the view that the cancellation of approval by the Director and communicated by the District Inspector was vitiated on account of non-compliance with the principle of natural justice.

11. We therefore allow the writ application quash the orders in Annexure 6 to the writ petition in O.J.C. No. 3693 of 1987 and Annexures 7 and 8 to the writ petition in O.J.C. No. 2604 of 1986. There will however be no order for costs.

V. Gopalaswamy, J.

12. I agree.