
(1972) 04 OHC CK 0030
In the Orissa High Court
Case No : O.J.C. No. 705 of 1971

Radhakrishna Jena

APPELLANT

Vs

Inspector of Schools, Balasore Circle and Others

RESPONDENT

Date of Decision : 17-04-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Orissa Education Act, 1969 — Section 27, 27(1), 27(2), 27(4), 4(4)
Orissa Education Code — Article 286, 286(7), 304, 305, 306

Citation : (1972) 38 CLT 718

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : B.M. Patnaik, M.R. Panda, S.P. Raju and K.N. Jena, for the Appellant;
A.G.A., G. Rath, R.K. Patra, B.P. Basu, B.B. Prades, L. Biswal and P.K. Das, for the Respondent

Judgement

R.N. Misra, J.—There is a High School known as the Agrawalla Vidyapitha at Haladipada in the district of Balasore under our jurisdiction. This school is said to have been established in 1966 and receives grant-in-aid from Government. By order No. 13939 dated 7-12-1970 (Annexure-1) the Inspector of Schools (opposite party No. 1) approved the constitution of the managing committee. Neither party disputes this fact or the fact that that committee was a properly constituted one. The Petitioner was accepted as the Secretary of the aforesaid managing committee. It appears, in 1971, disputes arose among the members of the Managing committee. The President non-co-operated. The Secretary did not hold meetings of the Managing committee in violation of the Orissa Education Code, requisitions of the members and directions of the Inspector of Schools ultimately a new committee was constituted wherein most of the members of the committee approved on 7-12-1970 were also members; some new members were taken in but the Petitioner was no more the Secretary. The Inspector approved this committee on 28-8-1971 (Annexure-2). The Inspector called upon the Petitioner to hand over charge of office of Secretary to the newly approved

Secretary (opposite party No. 3) by order dated 3.9.1971 (Annexure-3). The Petitioner in this application under Articles 226 and 227 of the Constitution has asked for quashing the order approving the new committee dated 28.8.1971 and the direction for handing over charge dated 3-9-1971 (Annexure 2 and 3 respectively).

2. The opposite party-Inspector and opposite parties 2 to 9 have made two separate returns. According to the Inspector his action is covered by Articles 308 and 309 of the Orissa Education Code. He has given details of the conduct, of the Petitioner justifying action in the locality to keep him out from the office of the Secretary and has taken the stand that he only accorded approval to the changed Managing Committee in terms of the powers vested in him under the Orissa Education Code. Opposite parties 2 to 9 have essentially adopted the stand of the Inspector and have given only some further details of events between December, 1970 and August, 1971 (the time taken between Annexure-1 and Annexure-2).

3. The Orissa Education Code until the Orissa Education Act of 1969 (15 of 1969) came into force was only a compilation of administrative orders and rules and was not based upon any statutory authority which could give the provisions of the Code the force of law. In several decisions of this Court the view expressed by their Lordships of the Supreme Court in *Dwarikanath v. Bihar State* AIR 1959 S.C. 249 was adopted. The Orissa Education Act, however, gave a statutory base to the Orissa Education Code Section 27(4) of the Orissa Education Act provided thus:

Until rules are made under this section, the rules contained in the Orissa Education Code which were in force immediately prior to the coming into force of this Act shall, in so far as they are not inconsistent with the provisions of this Act or the Constitution, be deemed to be rules made under this Act.

In view of the aforesaid provision we must proceed on the basis that the provision of the Orissa Education Code has been physically adopted as the first set of rules by the Statute. They stand on a different footing than the rules which are contemplated to be made under Sub-section (1) and (2) of Section 27, while the Rules to be made u/s 27 have to be confined within the rule making powers conferred upon Government, by virtue of Sub-section (4), the Orissa Education Code as such is made the first statutory rules. The limitations which normally face a rule making authority do not apply to the Rules in the Code and the only limitation in terms of Sub-section (4) is that the provisions in the Code must not be inconsistent with the provisions of the Act or of the Constitution of India. On the allegations made in this case by all the parties we have to examine the validity of Articles 308 and 309 of the Code. Though Mr. Patnaik, learned Counsel for the Petitioner contended that the provisions of those articles are contrary to the provisions contained in Section 7 of the Act, we have really not been able to see any inconsistency. Section 7(1) provides:

Every private educational institution shall have a managing committee or Governing body, as the case may be, constituted in accordance with the rules made in that behalf, failing which the recognition granted to the institution may be withdrawn by the State Government.

Sub-section (2) provides:

A. managing committee or governing body constituted after the commencement of this Act in respect of any aided educational institution shall before it starts functioning as such, obtain the approval of the prescribed authority in the prescribed manner.

The Agrawalla Vidyapitha was an educational institution which was existing at the time this Act came into force. By operation of Section 4(4) of the Act, this school must be deemed to have been established in accordance with this Act. The Act came into force in 1969. The undisputed Managing Committee of December, 1970 is thus one to which Section 7(2) of the Act applied. The Inspector of schools is the prescribed authority for according approval and, therefore, by annexure-1 the Inspector the prescribed authority accorded approval.

The Managing Committee of a school is conceived as a perpetual body. Article 286(7) provides that the term of office of an ordinary member shall not exceed three years. Under Chapter V, Section VI of the code deals with Government Girls schools. Section VII contains special Rules for aided schools may now be referred to. Article 304 defines aided schools and is to the following effect:

The term 'aided schools' includes a School which it is proposed to establish if It grant is given. A grant-in-aid may be promised to a school before it actually comes into its existence, provided that a satisfactory Managing Committee has been formed which shall undertake to be answerable for the maintenance of the institution and the fulfillment of all the conditions of recognition and aid including the due enforcement of such rules of discipline as are prescribed from time to time, and that there is reasonable likelihood of continued efficient management.

Article 305 which deals with the Managing Committee provides:

Every aided school should unless specially excepted by the Director, be Governed by a representative managing committee. The duly appointed secretary to this committee will be the corresponding agent of the schools recognised by Government.

Article 306 makes the provisions of Article 286 of the Code applicable to the Managing Committee of aided schools. Then comes the two main articles they are to the following effect:

308. The institution of the committee of a school seeking a grant in aid or the renewal of a grant-in-aid requires the approval of the Inspector or Deputy Director of Public Instruction (Women's Education) as the case may be....

309. The election of the chairman and secretary of the committee is subject to

the approval of the Inspector or inspectors, as the case may be.

As we have already said, the Petitioner wants us to quash the approval of the Inspector of the Managing Committee and the direction for handing over charge. Mr. Patnaik concedes that if annexure-2 is not liable to be quashed and opposite party No. 3 is found to have been properly approved as Secretary, the direction to hand over charge being consequential, is not open to be questioned. The opposite parties justify the action leading to Annexure 2 under the provisions of Articles 308 and 309 of the Code. Mr. Patnaik does not seriously dispute the position that under these two Articles, the Inspector of Schools has power to approve the constitution of the Managing Committee as also the appointment of Chairman and Secretary of such committee. Mr. Patnaik, however, contended that these two Articles are inconstant with the provisions of the Education Act and the Constitution. We have already indicated that there is no inconsistency between these two Articles and the Act. The only other question which is yet to be examined is 0.9 to whether the provisions in these two articles are inconsistent with the Constitution of India.

Mr Patnaik's contention is that no guide line has been indicated and arbitrary power has been vested in the prescribed authority in the matter of according approval to the constitution of the Managing Committee as also approval to the appointment of a chairman and the secretary. While raising this contention Mr. Patnaik has also disputed the manner in which the new committee came into existence. Learned Counsel for both sides while arguing the case indicated that we must decide the legality of the provisions contained in the articles and not enter into the labyrinth of facts to record a finding of fact as to whether there has been a valid reconstitution of the Managing Committee. We have already said that there was no dispute about the constitution of the Managing Committee of December, 1970. As we find, the new committee is essentially manned by the same members excepting a small alteration which has been necessitated by circumstances. The only material difference is the Petitioner who was Secretary is no more the Secretary. Annexure 2 does not show that the Inspector nominated the Secretary. The Secretary was elected by the Committee or most of the members of the Committee and the Inspector only accorded approval in terms of Article 309.

4. We shall now proceed to examine the contention of Mr. Patnaik that these two Articles are liable to be struck down as conferring unbridled, unguided and arbitrary powers on the prescribed authority in the matter of according or withholding approval to the constitution of the Committee and election of Chairman and Secretary to the Committee. The Inspector in his counter affidavit has state that the requirement of approval both for the constitution of the committee as also its two office bearers is for the purpose of exercising effective control on the institution keeping in view the fact that the institution receives grant-in-aid from Government. Article 304: which we have quoted above really indicates the purpose. We are not prepared to hold that these Articles are hit by

Article 14 of the Constitution. The position in law is when settled that where the policy and purpose of the impugned statute or rule is indicated no dispute can be raised because the provision is skeletal or that discretion is left to those entrusted with administering the law. Guidance can be obtained from the surrounding circumstances taken in conjunction with the well known facts of which judicial notice can be taken or of which the Court may be appraised by evidence before it in the form of affidavits. The provisions in the Education Code in regard to the need for a managing committee and the need of control in regard to its constitution and also approval of office bearers are an, with reference to grant-in-aid and its proper utilisation. Article 304 manifests the purpose and we have no doubt that there is enough guidance available from the provisions of the Education Code as to the purposes, for which the power has been conferred under Articles 308 & 309 of the Code on the prescribed authority. It is not unbridled or unguided power and in view of the fact that the purpose is well indicated, the guide line for exercise of the power is also clear. We, therefore, do not find that the provisions of Articles 308 and 309 of the Code are inconsistent with provisions of the Constitution.

5. There is no merit in the writ petition. It accordingly stands dismissed. We shall, however direct the parties to bear their own costs.

B.K. Ray, J.

6. I agree.