
(1994) 04 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 9540 of 1992

Rajendra Prasad Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-04-1994

Acts Referred:

Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 — Rule 28(4)

Citation : (1994) 1 OLR 593

Hon'ble Judges : S.K. Mohanty, J;A. Pasayat, J

Bench : Division Bench

Advocate : K.K. Swain, P.C. Pradhan and A.K. Rath, for the Appellant; Additional Government Advocate for opp. party Nos. 1 to 3 and 6 and B.L.N. Swamy, A.K. Rath, N.K. Barik and B. Das for opp. party Nos. 5 and 7 to 11, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.—Petitioner calls in question legality of office order dated 14-12-1992 passed by the Inspector of Schools, Balangir Education Circle (opp. party No. 2) vide Annexure-6 to the writ application relating to reconstitution of managing committee of Khari High School in the district of Balangu. Petitioner's case is that the said action is clearly contrary to the provisions relating to reconstitution as provided in the Orissa Education (Establishment, Recognition and Management of Private High Schools) Rules, 1991 (in short, the "Rules")

2. Background facts as portrayed by Petitioner are as follows:

Tahasildar, Sonapur was nominated by the Sub-Collector of the concerned subdivision to be the president of the institution in his ex officio capacity. Tahasildar nominated four persons, including the Petitioner, to be members of the managing committee. A letter was sent by the Tahasildar in this regard on 30-4-1992 to the Headmaster of the institution, who is the ex officio Secretary of the managing committee. On receipt of the letter from the Tahasildar, and after being intimated about nominations by the local M.L.A. and the Sub-Collector,

Sonepur, the Headmaster submitted a list of names for approval by the Inspector of Schools, Balangir Education Circle. The list included all the four names nominated by the Tahasildar including that of the Petitioner. It was indicated that the Grama Panchayat Officer, Sonepur (in short, "GPO") was nominated by the Sub-Collector, Sonepur as the Panchayat Samiti was under supersession, and consequently under the Chairmanship of Sub-Collector, Sonepur. The Headmaster's letter was received by the Inspector on 3-7-1992. Subsequently Tahasildar required certain particulars from the Headmaster in respect of four persons, whom local M.L.A. desired to be included in the list. The Inspector included the names of Narasingh Misra, Baishnab Dip and Smt. Pankajini Nag. There is some amount of dispute as to whether the local M.L.A. wanted inclusion of one Jogeswar Misra, or Ganeswar Misra as indicated by the Tahasildar in the letter dated 4-9-1991. The Headmaster on receipt of the letter of the Tahasildar, intimated that in terms of Rule 28(4) of the Rules after lapse of one month from the date of submission of proposal, the Committee automatically got approved and there was no need for any change. Nevertheless the Inspector of Schools included the names as suggested by the local M.L.A. Petitioner with reference to letter of the M.L.A. dated 25-8-1992 states that the change was effected on account of political pressure and in any event such a change could not have been made after expiry of one month from the date of receipt of proposal by the Inspector of Schools from the Secretary of the institution.

3. The learned Counsel for State on the other hand submitted that the list submitted by the Headmaster-cum-ex officio Secretary was incomplete since name of nominee of the Chairman, Panchayat Samiti was not included. Further, it is submitted that since the list was incomplete, it was within the competence of the Inspector of Schools to take note of all the materials available before him and to re-constitute the committee. By way of reply it is submitted by the Petitioner that the list was not incomplete and at the relevant point of time, Sub-Collector, Sonepur was functioning as Chairman of the Panchayat Samiti, and he had nominated the GPO. Sonepur to be his nominee. Subsequently desire of Chairman, Sonepur Block with regard to nomination was indicated to the Inspector of Schools after the election of the Chairman.

4. The proviso to Sub-rule (4) of Rule 28 which is relevant for adjudication of the dispute reads as follows;

28. Managing. Committee of Aided High School-

(1) to (3)

(4) The Inspector on receipt of the intimation from the Secretary may approve the list or suggest change with reasons within thirty days from the date of receipt ;

Provided that if no communication is received from the Inspector in this regard within a period of 30 days, it shall be deemed to have been approved in toto ;

Provided further that change, if any, suggested by the Inspector shall be considered by the President of the Managing Committee who shall resubmit the list either accepting the change or not to the Inspector of Schools within 15 days from the date of receipt of the communication from the latter, after which the Inspector shall approve the same ;

Provided also that no meeting of the Managing Committee convened during the intervening period from the date of intimation by the Secretary under Sub-rule (3) till the date of final approval by the Inspector shall be invalid for the reason of any vacancy in the membership or any defect in the constitution of the Managing Committee.

5. Rule 28 of the Rules deals with composition of managing committee of aided high schools. The local M.L.A. of the constituency in which the school is situated, and Chairman, Panchayat Samiti/Municipality/Notified Area in which the school is situated are to nominate a person each to be member of the Managing Committee. Persons so nominated enjoy office during the pleasure of the nominator. Therefore, the Chairman of the Panchayat Samiti was authorised to nominate a person to enjoy office, during his pleasure. The constitution of the managing committee and any change in the membership is to be intimated by the Secretary of the managing committee to the Inspector for approval. On receipt of intimation from the Secretary the inspector may approve the list or suggest changes with reasons within thirty days from the date of receipt of intimation, If no communication is received from the Inspector, in this regard within a period of thirty days, the composition suggested by the Secretary shall be deemed" to have been approved in toto.

6 Undisputedly the list submitted by the Headmaster was received by the Inspector of Schools On 3-7-1992. if the Inspector of Schools wanted "any such change to be effected the same was to be done within thirty day from the date of receipt of the intimation from the Secretary. Admittedly no such change has been suggested with reasons as required under Sub-rule (4) of Rule 28 by the Inspector. Therefore, the proviso to the said Sub-rule operated and the committee suggested by the Secretary is deemed to have been approved in toto. The letter of the Headmaster dated 17-8-1992 relating to nomination made by the Chairmen of Sonapur Block is the intimation which is required to be given by the Secretary in case of any change. Earlier the Sub-Collector had nominated the GPO, but when the Chairman was elected, he suggested the name of his nominee. It was for the Inspector to either accept the nomination or suggest change with reasons. That change alone could have been effected. So far as Petitioner and three Ors. are concerned, their names were originally nominated by the Tahasildar. The learned Counsel for State pressed into service the letter dated 4-9-1992 of the Tahasildar to show that the Secretary of the institution was required to come to the Tahasildar for discussion relating to four persons named in the letter. The power to nominate a person to hold office during pleasure of nominator is given to the local M.L.A of the constituency and the

Chairman. Panchayat Samiti/Municipality/Notified Area Council in which the school is situated. Such power is not given to any other person including the Tahasildar/Additional Tahasildar of the Tahasil who is nominated by the Sub-Collector of that Subdivision to be ex officio President. The Inspector of Schools had, therefore, no jurisdiction to exclude the names originally suggested by the Tahasildar and included in the panel of names submitted by the Secretary. The only change that could have been effected is in relation to the nominee of the Chairman of Sonapur Block. Accordingly, we quash the impugned order dated 14-12-1992 (Annexure-6) and direct that the list submitted by the Headmaster-cum-Secretary shall be operative. The only change shall be effected with regard to the nominee of the Chairman of Sonapur Block.

The writ application is accordingly disposed of. No costs.

S.K. Mohanty, J.

7. I agree.