

(1975) 06 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 534 of 1975

Ram Autar Prasad

APPELLANT

Vs

Chairman, Board of Secondary Education and Others

RESPONDENT

Date of Decision : 23-06-1975

Acts Referred:

Bihar High Schools (Constitution, Powers and Functions of Managing Committee)
Rules, 1964 — Rule 17A, 6(4)
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : AIR 1976 Patna 116

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : Probha Shankar Mishra and Ganesh Pd. Singh, for the Appellant;
Braj Kishore Pd., No. 2 and Yogesh Chandra Verma, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, J.—The petitioner being the Head Master of the town High School, Hajipur has filed the present writ application under Articles 226 and 227 of the Constitution of India for an appropriate writ or direction by this Court restraining respondents Nos. 3 to 9 from functioning as members of the Managing Committee of the said school in the following circumstances.

2. Under the provision of the Bihar High Schools (Constitution. Powers and Functions of Managing Committee) Rules, 1964, as amended by Government Notification dated the 24th April, 1967 (hereinafter to be referred to as the Rules) a regular managing committee of the said school was constituted in the year 1969 and the constitution of the Managing Committee was completed on the 16th of May, 1969. with the election of various office-bearers. Respondents Nos. 3 to 9 were elected, co-opted and/or selected as its members. As there was no hereditary or life member, the Managing Committee consisted of the petitioner as the Head Master and the respondents aforesaid.

3. According to Rule 17-A of the Rules, the terms of office of the elected, selected or co-opted members of the committee in question was only for a period of three years from the date of its constitution. The grievance of the petitioner in this writ application is that although the said period of three years expired on the 15th of May, 1972, the respondents are still continuing or purport to continue as members of the aforesaid Managing Committee and insist on his interfering with the affairs of the school,

A Bench of this Court in the case of Rambilash Ojha v. President. Board of Secondary Education. Bihar 1973 BBCJ 396 has also held that the second category of the members of the Managing Committee of a school namely the donors, guardian's representatives, a member of the State Legislature, three persons of the locality and the officer of the Education Department to be nominated by the President of the Board of Secondary Education, was hit by the mischief of Rule 17-A (1) of the Rules and these members would cease to be the members of the Managing Committee after the expiry of the period of three years from the date of the constitution of the committee whereas the term of the hereditary and life members as also the Head Master of the school continues. It is clear from the various provisions contained in Chapter III of the rules that nomination, election, selection and co-option of the members of the Managing Committee of the second category are to be made by the education authorities. In the counter-affidavit that has been filed on behalf of respondents Nos. 3, 5, 7 and 9 these facts have not been controverted. The stand that has been taken however on behalf of the third respondent, namely the donor member is that he being the sole donor there was no occasion for the authorities to hold any election to fill up his place.

In this connection it will be relevant to refer to Rule 6 of the Rules which relates to the election of the donors. According to this Rule the District Education

Officer after such enquiry if any, as he thinks fit, has to declare from time to time the names of the donors of the school and prepare a list thereof. In case there happens to be more donors than two then an election of two donors as members of the committee has to be held, Sub-rule (4) of Rule 6 reads as follows:

"If the names of only two persons are entered in the list referred to in Sub-rule (1) six months or one month as the case may be before the date fixed for election under Sub-rule (2) they shall be declared elected by the District Inspectress of by the Sub-divisional Education Officer."

4. It was contended on behalf of the petitioner by Mr. Prabha Shankar Misra and in my opinion rightly, that provisions of Sub-rule (4) of Rule 6 are mandatory and even in a case where the number of donors does not exceed two, being the requisite number for being taken as members in the Managing Committee by virtue of the provision of Rule 17-A, the term of office of such donor members would cease after the expiry of the period of three years from the date of the constitution of the committee and thereafter a fresh declaration has got to be

made in the said category by the prescribed authority and unless that is done, the third respondent cannot claim to continue as a member of the managing committee after the expiry of the period of three years fixed by Rule 17-A. By reading of the provisions of Sub-rule (4) of Rule 6 and the decision of this Court in Rambilash O.iha's case (supra) there is no escape from, taking the view that after the expiry of a period of three years of the constitution of the managing committee in question respondent No. 3 although he might be the sole donor member, ceased to be a member of the managing committee. No particular argument was advanced on behalf of the other respondents justifying their continuance by learned counsel before me.

5. Learned counsel for the respondents however contended that this application must fail on the principles of acquiescence and delay on the part of the petitioner. He contended that although according to the petitioner's contention respondents 3 to 9 ceased to remain as members of the managing committee in question, the petitioner was participating in all the meetings that were being attended to by these respondents and he was carrying on their directions and submitting to their orders. There is no force in this contention for the simple reason that merely participation on the part of the petitioner in the meetings in which the respondents were present and participated as active members as it is well settled that there is no estoppel against the statute (sic). It has already been seen that the term of all the respondents concerned automatically came to an end on the expiry of the period of three years so limited by Rule 17-A and mere participation of the petitioner in the meetings in which the respondents also happened to be present, cannot create any estoppel in the way of the petitioner to vindicate the grievance before this Court. The petitioner has not taken any undue advantage on account of the participation of respondents Nos. 3 to 9 and therefore, the petitioner is not estopped by the application of the rule of promissory estoppel,

6. Learned counsel also referred to some decisions in support of his proposition that this court should not interfere and grant a writ to the petitioner. He relied upon two decisions of the Supreme Court in Ajit Singh Vs. State of Punjab and Another, and Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, . He also referred to a decision of this Court in Ramballav Jalan v. State of Bihar 1970 BLJR 169. I am afraid none of those cases relied upon by the learned counsel has got any application to the facts of the present case. In the case of Ajit Singh the Supreme Court refused to interfere with the discretion exercised by the Punjab High Court where it had dismissed a writ application on account of laches of the writ petitioner. In that case the appointment of a Consolidation Officer under the provision of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 for preparation of the draft scheme was under challenge. In the next case before the Supreme Court some orders of the Regional Transport Authority, Bombay were under challenge on the ground that it was not properly constituted. In the Patna case, respondent No. 2 was illegally declared elected as a municipal

commissioner of Darbhanga Municipality in November, 1964. The election was challenged in this Court earlier but in the meantime respondent No. 2 was elected as Chairman. In the earlier writ application the election of respondent No. 2 as municipal commissioner was held to be vitiated but in spite of that he continued to be as the Chairman. A controversy arose thereafter as to whether the said respondent after the decision of this Court could continue as a Chairman. The question was agitated in a title suit and then ultimately by a writ application. In the meantime the term of the Municipal Commissioner itself expired in the year 1969 and steps for fresh election had already been taken by the State Government. In these circumstances this Court took the view that it was not a fit case in which a writ for quo warranto should be issued. None of the cases relied upon by learned counsel for the respondents has therefore got any application to this case as here the petitioner is only seeking a direction from this Court under the terms of Rule 17-A of the rules itself and nothing more. The statute itself has terminated the life of the membership of respondents Nos. 3 to 9 and their continuance in their office is therefore in direct violation of the aforesaid provisions. In this circumstance, therefore it must be held that the writ application is maintainable and the petitioner is in no way disqualified from presenting the same.

7. For all these reasons this application must succeed and accordingly I would direct respondents Nos. 3 to 9 to forbear from functioning as the members of the Managing Committee of the town High School Hajipur. Let a proper writ issue accordingly.

8. In the result the application is allowed but there will be no order as to costs.