

(1973) 09 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurdn. Case No. 558 of 1973

Ram Chander Prasad Chaurasia

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-1973

Acts Referred:

Bihar High Schools (Constitution, Powers and Functions of Managing Committee) Act,
1960 — Section 4, 5(2)
Bihar High Schools (Constitution, Powers and Functions of Managing Committee)
Rules, 1964 — Rule 10, 3, 37, 39, 4
Constitution of India, 1950 — Article 226

Citation : AIR 1974 Patna 180

Hon'ble Judges : Madan Mohan Prasad, J

Bench : Single Bench

Advocate : Basudeva Prasad, Radha Mohan Prasad and Narendra Prasad, for the Appellant; Krishna Prakash Sinha and Deogovind Prasad and Uday Sinha, Standing Counsel No. 3, for the Respondent

Final Decision : Allowed

Judgement

Madan Mohan Prasad, J.—This is an application under Article 226 of the Constitution of India for the issuance of a writ quashing an order passed by the Secretary, Secondary Board of Education, Bihar appointing an Ad Hoc Committee in place of a Managing Committee of a school and directing the respondents not to give effect to the same.

2. The petitioner claims to be a member of the Managing Committee which is sought to be replaced by the impugned order as also a member of a Board of Trust constituted in respect of the School. It is said that a high school called Uch Madhyamik Vidyalaya was started in the year 1964 by the petitioner and some others at Choukhandi Path in Sasaram in a rented building. This school was not functioning efficiently and there were financial difficulties. It was, there-fore, shifted to Rameshwarganj and it was renamed as Rameshwarganj Uch Vidyalaya (hereinafter referred to as "the school"). In the year 1969 a Trust was created

with regard to the ownership and the management of the school. A Managing Committee was also constituted. On the 2nd of November, 1970, the Board granted provisional recognition to the school for a period of one year and this period was further extended upto the 31st of December, 1971. The conditions upon which this provisional recognition had been granted having not been fulfilled, there was no further recognition after the expiry of the same on the 31st of December, 1971. The school thus remained an unrecognised institution.

3. There was, however, trouble with the headmaster, one Sheopujan Rai, who had defalcated some money of the school and mismanaged it in other respects. Accordingly his services were terminated. This dismissed headmaster started another school at Choukhandi Path. There was then an effort on their behalf to amalgamate the two schools. The matter was placed before the Managing Committee of the Rameshwarganj Uch Vidyalaya but they did not agree to amalgamation. This happened in May, 1972. Thereafter suddenly on the 7th of April, 1973 the Secretary of the school received a letter from the Secretary of the Board of Secondary Education communicating the Board's decision of appointing an Ad Hoc Committee in place of the existing Managing Committee which is Annexure 5. This was done without any notice to the Managing Committee and without their being heard in this respect. The Secretary of the proposed Ad. Hoc Committee also wrote a letter dated the 6th of April, 1973 asking the Managing Committee to hand over charge, which is Annexure 6. Hence this application.

4. Neither the State of Bihar nor the officers of the Board of Secondary Education, nor the members of the Ad Hoc Committee who have been impleaded as respondents to this application have filed any counter-affidavit. The acting headmaster of the school, respondent No. 6, alone has filed a counter-affidavit. This was, however, filed in respect of the matter of stay. When this application was admitted there was an order passed by this Court staying the operation of the impugned order in Annexure 5 and the demand in the letter (Annexure 6). It was, however, ordered that it would be open to the respondents to move this Court for vacating the order of stay in case the statements made by the petitioner were not correct in respect of the matter of recognition and the order by the Board having been passed without any notice to the members of the Managing Committee. Respondent No. 6, therefore, filed an application for vacating the order of stay. This application came up for hearing before a learned Judge of this Court who directed that the main application itself may be placed for hearing since the points requiring decision for the confirmation of, or vacating the stay order were themselves the main points in respect of the merit of the application. Learned counsel for the respondents has, therefore, relied on the facts stated in this application controverting the allegations made by the petitioner.

5. In this application respondent No. 6 has, generally speaking, controverted most of the important recitals in the petition. It has been denied that the petitioner is a trustee or a member of the Managing Committee of the school, It

is denied that the petitioner and others named by him had started the school. On the other hand, it is said that the school was started by the public out of funds collected by them. It is said that soon after the coming into force of the Bihar High Schools (Constitution, Powers and Functions of the Managing Committee) Rules, 1964 a meeting for the constitution of the Managing Committee of the school was convened by the Subdivi-sional Education Officer as provided therein and a Managing Committee was constituted. Two members thereof, however, resigned subsequently and in their place two persons, namely, Ramgopal Kanodia and Sheonarain Ram Chaurasia, were co-opted on the 25th of August, 1969. Then the Subdivisional Education Officer issued a notice to members fixing 7th of September, 1969 for the election of the President and Secretary and at that meeting the aforesaid two members were elected President and Secretary of the Committee. It is next said that the term of this Managing Committee having expired on the 6th of September, 1972 and the School being not managed properly, the Subdivisional Education Officer recommended creation of an Ad Hoc Body in its place. Accordingly, the aforesaid order was passed by the Board. It is said next that aforesaid Sheonarain Ram Chaurasia had filed a title suit challenging the constitution of the Ad Hoc Committee but the plaint of the suit was rejected and thereafter he has set up the present petitioner to make the same prayer before this Court. It is said that the Ad Hoc Committee started functioning after its appointment and the order of stay ought, therefore, be vacated.

6. A supplementary affidavit was also filed by the respondent wherein it is alleged that after proper inquiries he had found out that the school had been granted partial recognition (in respect of teaching of classes VIII and IX) in the year 1966 and that was continuing. In support thereof the respondent produced a letter from the Secretary of the Board (Annexure C). Another supplementary affidavit was filed by this respondent producing different papers by way of annexures to show that the school was not a proprietary school as claimed by the petitioner.

7. The allegations in the petition of the respondents and the supplementary affidavits aforesaid were again controverted by the petitioner in his rejoinder. It is stated therein that the title suit aforesaid had failed on account of the notice u/s 80 of the CPC and that an appeal was pending as against that order. Annexure C was said to be a forged document. It was stated that the school had been treated as unrecognised after the expiry of the recognition on the 31st of December, 1971 and its students were allowed to appear as private candidates, in support of which fact the petitioner produced the letters. Annexures 7 and 8. In another rejoinder to the second supplementary affidavit of respondent No. 6 it was said that the papers produced to show that the school was not a proprietary one related to the school at Choukhandi Path which had continued to run as a separate school and not to the present school. It is also stated that the partial recognition related to the school at Choukhandi Path and not to the present school.

8. Learned counsel for the petitioner has urged firstly that the order appointing an Ad Hoc Committee is without jurisdiction, whether it be an order passed under Rule 39 of the Bihar High Schools (Constitution. Powers and Functions of Managing Committee) Rules, 1964 (hereinafter referred to as "the Rules") or u/s 5 of the Act Secondly it has been urged that the school having ceased to be a recognised one the Board had no jurisdiction to appoint any Ad Hoc Committee. Learned counsel for the respondents has, however, urged that the petitioner has no locus standi to maintain this application and secondly that the school continued to be a recognised one though partially and, therefore, the Board had such jurisdiction.

9. I propose to deal first with the first objection raised by learned counsel for the respondents. The petitioner has alleged that he was one of the founders of the school, that he is a member of the Board of Trust created in respect of the school and that he is also a member of the Managing Committee appointed by the Trust which, is functioning. In order to substantiate the contention he has produced Annexure 1 which is the proceeding of a meeting of the Managing Committee held on the 17th of May, 1969 and which shows his presence therein. This meeting of the Managing Committee had dispensed with the services of the headmaster Sheopujan Rai. Annexure 4 is a copy of the proceedings of another meeting dated the 5th of May, 1972 which also show the petitioner as one of the members of the Managing Committee. At this meeting the Managing Committee had considered the proposal of amalgamation of the two schools at Choukhandi Path run by Sheopujan Rai and the Rameshwarganj School. It appears next from Annexure F (2) that the petitioner had received a sum of Rs. 110/- for the purpose of getting registered sale deed in respect of the land being acquired for the school. In such circumstances I am not prepared to rely on the affidavit sworn by respondent No. 6 wherein he has stated that this petitioner had nothing to do with either the formation of the school or the Board of Trust or the Managing Committee. On the other hand, the respondent relies on Annexure A, a proceeding of a meeting convened by the Subdivisional Education Officer on the 7th of September, 1969, for the purpose of election of the President and the Secretary of the Managing Committee. This petitioner has not been shown to be one of the members of the Committee present at the meeting. This document cannot conclusively show that the petitioner was not a member of the Managing Committee at all. It only shows who were the persons present It cannot be inferred therefrom that the petitioner was not a member at all. In any case upon the documents aforesaid it appears clear that the petitioner was a member of the Managing Committee at least before the formation of this new Committee on the 7th of September, 1969, So far as the creation of the Trust is concerned, respondent No. 6 merely says that it is a dishonest transaction. It appears that in the present case the real fight between the parties is with regard to the ownership of the school. It has already been mentioned that the admitted secretary of the school Sheonarain Chaurasia himself had filed the title suit on the allegation aforesaid. It seems that the petitioner and others claim the school

to be a proprietary one whereas respondent No. 6 and others allege it to be a public school. It seems thus that on this account the petitioner and others are not recognising the Managing Committee formed by the Sub-divisional Education Officer. It appears that the trustees and others have set up a Managing Committee of their own. It, however, appears that the petitioner does not claim to be a member of the Managing Committee set up by the Sub-divisional Education Officer in accordance with the Rules aforesaid. The question whether one Managing Committee is in control of the school or the other, has thus become a disputed question in the present case and upon the meagre materials it is difficult to say one way or the other. The fact, however, remains that the petitioner is a person who is undoubtedly interested in the school. He is making a claim that the school is a proprietary one. It is not for him in order to be able to maintain a writ application to prove beyond doubt that his claim is correct. It is relevant to note that an appeal is pending against the rejection of the plaint and the title suit filed by Sheonarain Chaurasia. Obviously, therefore, the petitioner is a person who is interested in the school and adversely affected by the impugned order.

10. Learned counsel for the respondents has urged that he cannot maintain the present application because he is not a member of the Managing Committee which has been superseded by the impugned order. I am unable to accept this argument. In view of what I have said earlier, the petitioner alleges a legal right as one of the trustees of the school aforesaid and as a member of the Managing Committee set up by the Board of Trust, Obviously, therefore, he is a person affected by the order. It is not necessary that the petitioner must be the member of the Committee which is being superseded. True that such a member is directly affected by the order. However, even if a person is not a member of such Managing Committee and he has a legal right or interest, he can certainly maintain an application for issuance of a writ. In the view which I have taken I am supported by a decision of the Supreme Court in the case of *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . In this case their Lordships held that a petitioner who seeks to file an application under Article 226 of the Constitution should ordinarily be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest. It can also relate to an interest of a trustee and in exceptional cases, as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof. Applying the principle of law laid down therein to the circumstances of this case there can be no doubt that the petitioner is a person who is prejudicially affected by the order, that he has a legal interest on the basis of his claim as a trustee and on the basis of the fact that he was a member of the Managing Committee before another committee was constituted by the Sub-divisional Education Officer. In the case of *N.V. Subba Rao and Others Vs. The Government of Andhra Pradesh and Others*, a learned Single Judge has gone to

the extent of saying that where the order is totally without jurisdiction the court would entertain an application for writ even at the instance of a stranger. It is not necessary for me in the present case to go to that extent in order to be able to hold that the petitioner is entitled to maintain this application. I do not, therefore, find any substance in the preliminary objection raised by learned counsel for the respondents.

11. Coming now to the merits of the case, learned counsel for the petitioner has urged firstly that assuming that the school was recognised and the Board had the right to pass orders under the aforesaid rules, it is obvious that the impugned order cannot be held to be with jurisdiction, firstly because they had no right to appoint an Ad Hoc Committee under Rule 39 and secondly because assuming that the order is u/s 5 of the Act no notice was given to the Managing Committee before the order was passed and the principle of natural justice was violated. There is substance in this contention.

12. It will appear that Chapter III of the Rules contains the provisions relating to constitution of Managing Committee of a school other than a proprietary school. Rule 3 lays down as to who would be the members of the Managing Committee. Rules 4 to 8 provide for the manner in which such members are to be elected or selected or co-opted. Rules 9 and 10 provide for the manner of election of the President and Secretary of the Managing Committee, Rule 10-A about their suspension or removal, Rule 10-B with regard to the notices of meeting for election and Rule 10-C with regard to the quorum at such meetings. Turning now to Chapter VIII which contains miscellaneous and transitory provisions, we find that Rule 36 provides that the constitution of the Managing Committee shall be deemed to be completed from the date on which the President and the Secretary are elected, appointed or nominated, as the case may be. Rule 37 lays down as follows:--

"For each school a Managing Committee shall be constituted in accordance with these rules, within a period of two years from the date of publication of these rules in the Official Gazette."

Next, Rule 38 provides that the Managing Committee functioning in schools on the date when the Rules are published in the Official Gazette shall cease to function after a period of two years from the date of their publication or the day the Managing Committee is constituted under these Rules. The relevant Rule 39 is as follows:--

"Where a Managing Committee is not constituted in accordance with these rules, within the period specified in the Rule 37, the powers and duties of the Managing Committee, President and Secretary shall, until its constitution in accordance therewith be exercised and performed by such persons as may be appointed by the President of the Board of Secondary Education for the purpose."

13. Reading these rules together it is obvious that the provisions of Rule 37 are intended to provide a period of two years from the date of the publication of

these rules within which the Managing Committee has to be constituted in accordance with the rules. Obviously it has no application to a case where the Managing Committee has been once constituted in accordance with these rules and its term has expired, assuming that it may so expire. In this connection It will be relevant to mention that it has been held by a Division Bench of this Court in the case of Ram Bilas Ojha v. President, Board of Secondary Education, Bihar reported in 1973 Bihar Bar Council Journal 396, that the Managing Committee as such does not come to an end and only the term of some of its members expires in accordance with the rules. Rule 39 thus obviously means, because it refers to Rule 37, that in case the first Managing Committee under the rules is not constituted within the period prescribed by Rule 37, the President of the Board may appoint persons to exercise the powers and duties of the Managing Committee its President and Secretary until the Managing Committee is constituted in accordance with the Rules. I have already mentioned that Rules 3 to 10 lay down the rules in accordance with which the Managing Committee is to be constituted and its President and Secretary appointed. Therefore, it follows that where there has been no constitution of the Managing Committee in accordance with Rule 37 persons can be appointed to discharge the functions of the Managing Committee until a Managing Committee is constituted in accordance with Rules 3 to 10. Rule 39 thus has no application to a case where a Managing Committee has already been constituted once in accordance with the rules and a fresh Managing Committee has to be constituted subsequently.

14. It is obvious that by these rules the rule making authority intended to end the Managing Committees existing at the date of the publication of these rules and for the constitution of Managing Committees in accordance with the rules. For that reason Rule 38 provides that such Managing Committees as exist at the date of the publication of the rules shall cease to function after a period of two years from the date of publication of the rules or the day the Managing Committee is constituted under the rules. Thus the rule making authority gave a period of two years as the time during which Managing Committees should be constituted in accordance with these rules. The positive direction to that effect is contained in Rule 37 and Rule 38 is the resultant rule the effect of which is to prolong the life of the existing Managing Committee by two years or until the day the Managing Committee is constituted,

15. I must point out that there is a lacuna in the wordings of Rule 38 inasmuch as it does not say that the Managing Committee shall cease to function after a period of two years from the date of publication of the rules or the day the Managing Committee is constituted under these rules "whichever is earlier". Rule 39 becomes meaningless if Rule 38 is to be read so as to provide for the continuance of the existing Managing Committee until the next Managing Committee is constituted under the rules even though that be later than the expiry of the period of two years. If that were the meaning then Rule 39 would become absolutely redundant and there would be a conflict between Rules 38 and 39. If Rule 38 were intended to allow the existing Managing Committee to

continue to function even after two years from the day of publication of the rules and until the constitution of the Managing Committee under these rules, there would be no question of the Board appointing persons to exercise and perform the powers and duties of the Managing Committee as laid down in Rule 39. It is a well-settled rule of interpretation that an interpretation should be given so as to harmonise apparently conflicting provisions of law. Rule 38 must therefore be read as providing that the existing Managing Committee shall cease to function after the expiry of the period of two years from the date of publication of these rules or the day the Managing Committee is constituted, whichever is earlier.

16. In any case, the purpose of Rule 39 is to provide for the exercise of the powers and duties of the Managing Committee by persons appointed by the Board after the expiry of the period of two years specified in Rule 37. Reading the rules aforesaid the irresistible conclusion is that Rule 39 has no application to the case where a Managing Committee has been constituted in accordance with these rules within a period of two years from the date of the publication of the rules. In the view which I have taken I am supported by the decision of the Division Bench of this Court in the case of *Ram Bilas Ojha*, 1973 Bihar Bar Council J. 396 (supra) wherein in similar circumstances their Lordships held that Rule 39 was not applicable to the case before them as the Managing Committee had already been once constituted after the rules had come into force. The position that Rule 37 did not apply was conceded in that case and for that reason the point did not require elaborate consideration. In the present case the Board purported to act on the ground that the Managing Committee's term had come to an end and, therefore, an Ad Hoc Committee was being appointed. The Board had no jurisdiction to appoint an Ad Hoc Committee at least under Rule 39.

17. The only other provision which is relevant to the question under discussion is that contained in Section 5 Of the Act which is as follows:--

5. Managing Committees. (1) For every high school there shall be a managing committee constituted in such manner as may be prescribed.

(2) If the Board is of the opinion that the managing committee of a high school is not functioning in a way conducive to the maintenance of discipline among its teachers and pupils and is not carrying out the directions of the Board or administering the finances of such school properly it may, by an order, after giving the managing committee a reasonable opportunity of being heard, suspend for a period not exceeding six months or dissolve the managing committee :

Provided that in case of high schools established and administered by minorities based on religion or language the Board shall not make such order.

(3) Where the Board suspends or dissolves a managing committee under Sub-section (2), the powers and duties of the managing committee shall be exercised and performed by such person or persons, as may be appointed by the Board until the expiry of the period of suspension or the reconstitution of the managing

committee, as the case may be.

(4) Where a managing committee is dissolved under Sub-section (2), a new managing committee shall be constituted in accordance with the rules made in this behalf within one year of such dissolution."

It will be noticed that if the Board has formed an opinion as mentioned in Sub-section (2) of Section 5 it has to give the Managing Committee a reasonable opportunity of being heard. It can exercise the power of suspending or dissolving the Managing Committee only thereafter. Although the Board has not taken this as a ground in the present case for appointing an Ad Hoc Committee in place of the Managing Committee, the respondent has produced a letter from the District Education Officer (Annexure B dated 28-12-72) containing the recommendation that the Managing Committee of the school should be dissolved and an Ad Hoc Committee be appointed. The impugned order has undoubtedly been passed thereafter. Thus even if it be assumed that the Board has exercised its powers u/s 5 (2) of the Act, in view of the recommendation of the aforesaid officer the order must be held to be in violation of the principles of natural justice for the simple reason that no notice was given to the existing Managing Committee nor were they heard in this respect as required by Sub-section (2) of Section 5, The allegation that the Managing Committee was not heard has been made by the petitioner. There is, however, no denial of this fact. The only answer given by the respondent is that no such notice was necessary. That is absolutely wrong. Before the Board could exercise its powers u/s 5 (2) for dissolving the Managing Committee it was bound to hear the Managing Committee. Thus, even if the order be taken to be one under Sections 5 (2) and 5 (3) of the Act it must be held to be bad in law.

18. In either view of the matter the order cannot be supported either by the provisions of Rule 39 or of Section 5 (3) of the Act. There is no other provision which entitles the Board to supersede a Managing Committee and create an Ad Hoc body for the exercise of the powers and functions of the Managing Committee. The order passed by the Board (contained in Annexure 5) must, therefore, be held to be without jurisdiction. Consequently the demand made by the Secretary of the Ad Hoc Committee (contained in Annexure 6) asking the existing Managing Committee to hand over charge to him must also be held to be without any authority. Both these orders have, therefore, to be struck down.

19. The other ground on which learned counsel for the petitioner has assailed the orders of the Board is that the school not being a recognised one the Board had no jurisdiction to appoint an Ad Hoc Committee. The argument is that the recognition having come to an end on the 31st of December, 1971, it was no more a recognised school thereafter and the present order could not, therefore, be passed. It has, however, been pointed out by the respondents that the school had been recognised partially in respect of teaching in classes VIII and IX as far back as 1966. It was in the year 1970 that "full recognition" though provisionally, was given on the 2nd of November, 1970 for a period of one year which again

was extended for nearly another year, i.e., until the 31st of December, 1971. The recognition became "full" inasmuch as the school was recognised for the purpose of teaching in classes X and XI also. Admittedly the terms "partial" and "full" recognition carry the sense that a partial recognition is for classes VIII and IX whereas full recognition is for all the four classes from VIII to XI, The respondent has also produced Annexure C, a letter from the Board saying that the partial recognition which had been granted to the school continued irrespective of the fact that the full recognition, i.e., recognition with respect to teaching in classes X and XI, had come to an end. Section 4 of the Act defines the functions of the Board. Clause (b) of this section is as follows :

"Subject to such conditions and restriction as may be prescribed, the Board may grant recognition to schools imparting instruction in secondary or high- er secondary education and suspend or withdraw such recognition and any recognition granted by the Board to such schools before the date of commencement of this Act and continuing on such date shall be deemed to have been grants ed under this Act."

It will thus appear that it is within the powers of the Board to grant recognition or withdraw it. In the present case the Board had granted recognition for the teaching in classes VIII and IX and it is said by the Board that it is continuing. Obviously, therefore, even though the recognition of the school was partial, the Board had the jurisdiction to exercise its powers with regard to this school. Section 2 (b) of the Act defines a "high school" and says that it means a recognised school imparting instruction in secondary or higher secondary education. The Act itself is, as the preamble shows, to control and regulate administration of high schools. In my view, therefore, even though the recognition which continued after 1971, was partial and in respect of the teaching in classes VIII and IX alone the Board had jurisdiction to pass such orders as were authorised by the Act or the Rules. The contention of learned counsel to the contrary cannot, therefore, be accepted.

20. Mr. Basudeva Prasad, however, tried to get over this difficulty by arguing that the "partial recognition" which had been granted earlier must be deemed to have been merged in the "full recognition" granted subsequently and, therefore, when the "full recognition" had come to an end the "partial recognition" granted earlier had also come to an end. I am not prepared to accept this argument. So far as partial recognition was concerned, it was unconditional. When the Board found that the school was fit to be granted recognition for the purpose of teaching in classes VIII and IX, it granted such recognition. For the purpose of teaching in classes X and XI they granted provisional recognition on certain terms. The period was again extended by another year so as to allow the school to fulfil the terms and conditions in order that the recognition for the teaching in classes X and XI could be given permanently. It is not a case where a smaller right can be deemed to have merged in a bigger right. It is a case where recognition for one purpose was granted earlier and provisional recognition for another purpose was

granted Later though provisionally. Besides that, it must be borne in mind that the final authority in this respect is the Board itself, if the Board says as it does in the present case, that the recognition for teaching of classes VIII and IX still continues, it is not for the petitioner to say that it has come to an end. This argument is, therefore, of no avail.

21. In view of my finding on the first contention of learned counsel, however, this application has got to be allowed. The order passed by the Board contained in Annexure 5 is, therefore, quashed. The demand made in Annexure 6 is also held to be without any authority. Let a writ of mandamus be, therefore. Issued against the Board to forbear from giving effect to their order passed on the 4th of April, 1973 appointing an Ad Hoc Committee. In the circumstances of this case, however, there will be no order as to costs.