
(2013) 01 PAT CK 0020
In the Patna High Court
Case No : CWJC No. 22901 of 2012

Ramesh Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Bihar State Universities Act, 1976 — Section 60(1), 60(4)

Citation : (2013) 2 PLJR 94

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Mukesh Kumar No. 1, for the Appellant; Kundan Bahadur Singh for the State, Mrs. Nivedita Nirwikar for the University and Mr. Suraj Narain Yadav for the Respondent No. 9, for the Respondent

Judgement

Mihir Kr. Jha, J.

I.A. No. 8290/2012

1. For the reasons mentioned in this application the prayer made therein is allowed and the intervener Rana Gangeshwar Singh seeking to oppose the prayer made in this writ application is added as respondent no. 7 of this writ application.

I.A. No. 244/2013

Similarly for the reasons mentioned in this application the prayer made therein to assail the order dated 4.1.2013 constituting a new Ad hoc Committee by Lalit Narayan Mithila University (hereinafter referred to as "the University") in respect of Sant Kabir College, Samastipur (hereinafter referred to as "the College") is allowed, inasmuch as the said prayer seeking quashing of the order dated 4.1.2013 is only in furtherance of the main relief prayed in the writ application whereby and whereunder the University by issuing Memo No. 16703-09/2012 dated 29.11.2012 had dissolved the Governing Body.

C.W.J.C. No. 22901/2012

2. Coming to the merits of this case this Court having heard counsel for the parties is of the considered opinion that though the action of the University of dissolving a regular Governing Body in a given situation may be justified but if the reason for its dissolution was sought to be perpetuated in formation of an Ad hoc Committee, such action and order of the University has be held to be tainted with malice in law.

3. In the present case the sole reason for dissolution of the Governing Body of the College was that its four members had resigned. Coupled with that there is/ was also dispute on the post of Principal and the term of the teacher's representative had expired leaving only the petitioner, a donor member to be the sole person in the earlier Governing Body. In such a situation if the Governing Body was reduced to a body of one member the action of the University in dissolving the Governing Body was a fate accompli and its being substituted by the Ad hoc Committee till formation of the new Governing Body was absolutely essential but then this Court would fail to understand as to how those very members whose resignation had necessitated dissolution of the Governing Body could be again made the members of the newly constituted Ad hoc Committee. It is here that the malice in law, if not on facts becomes absolutely clear.

4. Faced with this situation Mrs. Nivedita Nirwihar, learned counsel appearing on behalf of the University, has fairly submitted that the Vice-Chancellor of the University has got no lust in retaining the present members of the Ad hoc Committee dated 4.1.2013, and University is fully prepared to constitute a new Ad hoc Committee within a period of 15 days from today strictly in accordance with the provisions of Section 60(4) of the Bihar State Universities Act (hereinafter referred to as "the Act") as also a regular Governing Body in accordance with law with Section 60(1) of the Act. Such submission of the learned counsel for the University is not opposed either by the learned counsel for the petitioner or newly added respondent no. 7 who have also submitted that the Ad hoc Committee cannot continue forever and therefore, a regular Governing Body has to be constituted within a fixed time frame.

5. In the considered opinion of this Court the constitution of an Ad hoc Committee in terms of Section 60(4) of the Act is only by way of temporary measure, inasmuch Section 60(4) of the Act reads as follows:--

The Vice-Chancellor shall constitute an adhoc committee for the management of the College so long as Governing Body is not constituted in accordance with the provisions contained in sub-section (1).

6. As noted above, the spirit of Section 60 sub-section (4) is very clear that the life of Ad hoc Committee is only till constitution of a regular Governing Body and such Ad hoc Committee being wholly interim in nature cannot be either allowed to continue for an indefinite period or be substituted by another Ad hoc Committee. The requirement of law is a regular Governing Body which must be constituted by the University.

7. It has to be also kept in mind that autonomy gives to an affiliated College in terms of Section 59 of the Act even while constituting the regular Governing Committee has to be also fully respected by the University. By the nature of power u/s 60(1) of the Act all that has to be done by the University and its Vice-Chancellor is to put three members by way of University representative and a representative by way of an officer of the State Government posted in the District in the rank of S.D.O. or above and a member amongst the member of the Parliament or State legislature mainly residing in the District. It must be kept in mind that the regular Principal of the College is an Ex-officio member of G.B. and the teachers of the College have also a right to be represented in the Governing Body by way of electing a teachers' representative. Similarly among the donors who are recognized in the donor register of the College there has to be an election for one of them being included as a member of the Governing Body and it is this body of six members who have to elect by way of co-option, the seventh member and these seven members have to hold the first meeting for electing President and the Secretary of G.B. Such being the spirit of Section 60(1) of the Act read with the Statutes dated 12.2.1982 the Governing Body is a perpetual body and its members in fact have to only keep on being replaced as per tenure given in section 60(1) of the Act. In that view of the matter whenever the statutory provision of constituting the Governing Body is to be considered the respective nomination by the University and its Vice-Chancellor and the election among donors and teachers with a regular Principal have to be carried out by way of continuous ongoing process.

8. All these statutory provisions, however, seem to have lost its meaning in the present scenario not only for the petitioner's College in question but in fact for almost all the affiliated colleges, where on account of a recent decision taken by the State Government to pay salary to the working teachers and non-teaching employee within the sanctioned strength by way of financial aid, the post of Secretary of the G.B. has become attractive and lucrative. In such a situation, though right of the teachers for getting payment of salary as per the Government grant has to be protected basically by head of the Institution, namely, the Principal of the College, the role of Secretary of G.B. also being defined under the statutes, he has only the capacity to bring such matter to the notice of the Governing Body. The Secretary in fact cannot take any independent decision in the matter of governing service condition of the teachers of the affiliated College. That is how this Court would read the statute framed by the Chancellor on 12.2.1982 where the power of the Secretary has been well circumscribed and reads as follows:--

The Secretary of the Governing Body of every admitted college shall be agent and executive officer of the Governing Body and shall:--

(a) convene meetings of the Governing Body, prepare agenda thereof including items suggested by the Principal and the President.

(b) carry on correspondence with the University and the Government and others

with regard to the decisions of the Governing Body and give effect to the decisions of the Governing Body.

(c) on applications being forwarded or recommended by the Principal grant all other kinds of leave to the staff according to the laws of the University in anticipation of the sanction of the Governing Body, where sanction is needed.

(d) be responsible for taking such action on behalf of the Governing Body as he may be authorized to take or which may become necessary in view of any decision of the Governing Body.

(e) grant to the Principal, casual or quarantine leave or permission to leave the station.

(f) be responsible for the compliance of the orders and directions of all lawful authorities.

(g) be responsible for the enforcement and observance of all the laws and direction of the University.

(h) inspect the college, its buildings, laboratories, workshops, equipment-store and records and have access to all records any time and power to sign the entries made therein.

(i) may with the approval of the President seal and seize any record of the college for specific period and give a receipt to the Principal of the records seized or taken in his possession provided that when any action is taken under this clause report shall be sent to the Vice-Chancellor alongwith records seized and justification for seizure.

9. This Court has purposely extracted the provisions under the statute in order to make it clear to the petitioner also that he was not supposed to override the statutory provision for controlling the affairs or the G.B. He may be a donor and also elected as the Secretary of the College but then he is not the Governing Body of the College. It is the body of seven members of the Governing Body which has to take any decision with regard to service condition of the teaching and non-teaching employees of the college, inasmuch as, the power of the Governing Body is also well defined in Clause 5 of the same statutes which reads as follows:

Except in the case of colleges owned and maintained by the Government, the Governing Body of an admitted college shall:--

(a) pass with or without modification the annual accounts and annual budget estimates prepared by the Principal.

(b) make appointment against sanctioned posts of teachers subject to the provisions of the Act.

(c) make appointment of non-teaching staff, other than inferior staff within the budget provision against sanctioned posts.

(d) on the application being recommended or forwarded by the Principal grant all kinds of leave except casual and quarantine leave, which will be granted by the Secretary.

(e) constitute selection committee/committees for appointment of various categories of staff excluding inferior staff.

(f) be responsible for compliance with orders and directions of the University.

(g) be responsible for the enforcement and observance of the laws and directions of the University.

(h) consider, examine and sanction all proposals of scheme for improvement and expansion of the college.

(i) exercise general supervision over all financial and administrative matters relating to the college.

10. The contention of the newly added respondent no. 7 that he was the President and therefore, whatever action was taken by the petitioner in capacity of Secretary of the College and/or Principal of the College was wrong also cannot be accepted for the simple reason that the power of the President of the Governing Body is also well defined in Clause 6 of the same Statute which reads as follows:

The President shall be the head of the Governing body and:--

(a) shall preside at the meetings of the Governing Body and either record the proceedings of the meeting of the Governing Body himself or get them recorded and sign the same, provided that in the absence of the President the members present at the meeting may elect a chairman for the meeting from amongst themselves.

(b) may when he considers it necessary in the interest of the college direct the Secretary to convene a meeting of the Governing Body and the Secretary shall comply with the same.

(c) may direct the Secretary and/or the Principal to comply with the directions of the Governing Body and implement the decisions of the Governing body within a date fixed by him and ask for a compliance report thereof.

(d) may inspect the college, its office, buildings, laboratories workshops, equipments, store and records and shall have a right of making an inquiry in respect of any matter connected with college and submit a report to the Governing Body with such suggestions as he may deem necessary and shall send a copy of the same to the Vice Chancellor.

(e) shall see that the proceedings of the Governing Body are carried on in accordance with the provisions of the Act, Statutes, Ordinance, Regulations and Rules of the University and report to the Vice Chancellor every proceedings which are not in conformity with such provisions.

11. That being the spirit of the Act and Statute wherein all the authorities, namely, Governing Body, its President and the Secretary have been assigned their respective powers, they cannot override the authority vested in them. In the present case, however, there has been some sort of misunderstanding if not bickering among the members and particularly amongst the President, Secretary and Principal of the College which had led to an unprecedented situation in which all the members of the Governing Body, to the exception of the petitioner had to resign or leave their post. This Court, however, would not for time being accept the submission of the counsel for respondent no. 7 that it was the petitioner who alone was at fault.

12. Coming to the basic relief sought by the petitioner as also amended by the interlocutory application this Court must hold that though the action of the University in dissolving the existing Governing Body was correct, its action of nominating those very resigned members of that very Governing Body as the members of the Ad hoc Committee was wholly unjustified. In that view of the matter, the order of the University constituting Ad hoc Committee dated 4.1.2013 is hereby quashed.

13. As noted above, the learned counsel for the University has agreed for constitution of a fresh Ad hoc Committee till constitution of the regular Governing Body within a period of 15 days from today. Keeping in view that such Ad hoc Committee earlier constituted by the Vice-Chancellor on 4.1.2013 had the presence of Addl. District Magistrate by way of the official representative, this Court in the peculiar facts and circumstances of this case would direct that it will be the District Magistrate, Samastipur who shall be the President of the Ad hoc Committee till constitution of the regular Governing Body. It is this Ad hoc Committee headed by the District Magistrate which will ensure election of donor member and the teachers' representative as laid down in the Statute within a period of two months from the date of its coming into office and would send their names to the University within the same period. The earlier election of the petitioner as a donor shall also not remain valid and in fact as per statute a new election of the donor members from amongst all those whose name is recorded in the donor register of the College will be held for his being included as a member in the Governing Body of the College. Similarly it is this Ad hoc Committee which will decide as to whether there is a Principal duly appointed under the recommendation of the Commission and if there is no such Principal, the name of Senior-most teacher of the College having the recommendation of the Commission in terms of Section 57A of the Bihar State Universities Act will be sent for his being nominated as a member of G.B. Such nomination of Principal shall however be discontinued once the G.B. would appoint a regular Principal. The Ad hoc Committee in fact shall also ensure that if there is no Principal of the College as required u/s 57A of the Act and the Statutes framed thereunder, it will take steps for advertising that post so that a duly appointed Principal comes into the office and is represented by way of Ex-officio member of the Governing Body.

14. It goes without saying that this time when the University constitutes a Ad hoc Committee, it will not nominate any of the members whose names have been included in the impugned notification dated 4.1.2013. The University and the Vice-Chancellor at the same time while nominating the members of the Ad hoc Committee would keep in mind that such persons can only be made the members of the Ad hoc Committee whose inclusion is even otherwise permissible within the ambit of Section 60(1) of the Act. The Vice-Chancellor of the University shall also keep in mind that there has to be some representation of the College, inasmuch as the affairs of the College cannot be governed by all the outsiders.

15. Such Ad hoc Committee which will be nominated by the University and its Vice-Chancellor strictly in accordance with Section 60(4) read with Section 60(1) of the Act will not be allowed to remain in office for a period of more than three months from the date of constitution of the Ad hoc Committee, inasmuch as it is the requirement of law that the Ad hoc Committee has to remain in office only till constitution of a regular Governing Body and therefore, once the primal object of taking steps for constitution of the regular governing body by way of sending its representative of teachers, donors and regular Principal is completed enabling rest three members to be nominated by the Vice-Chancellor of the University the constitution of the G.B. must be completed for electing seventh co-opted member and thus, constituting the regular body within the specified time frame.

16. Thus, in the light of discussions made above the writ application is allowed in part and the constitution of Ad hoc Committee dated 4.1.2013 is quashed. The respondent University and its Vice-Chancellor must constitute a new Ad hoc Committee within a period of 15 days and also a regular Governing Body of the College within three months from the date of constitution of Ad hoc Committee. With the aforementioned observation and direction, this writ application is disposed of.