

(1964) 09 PAT CK 0011

In the Patna High Court

Case No : Misc. Judl. Case No. 758 of 1963

Ramswarup Singh and Others

APPELLANT

Vs

The Sub-divisional Officer and Others

RESPONDENT

Date of Decision : 15-09-1964

Acts Referred:

Bihar High Schools (Control and Regulation of Administration) Act, 1960 — Section 5(1)
Constitution of India, 1950 — Article 141, 245

Citation : AIR 1965 Patna 124

Hon'ble Judges : S.C. Misra, J;G.N. Prasad, J

Bench : Division Bench

Advocate : Radha Raman, for the Appellant; K.B.N. Singh, S.B.N. Singh and B.D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—The petitioners have moved this Court for a writ of mandamus, or any other appropriate writ or order, challenging the nomination of opposite party Nos. 1 to 4 to the Managing Committee of the Arwal High English School as also for the cancellation of the instructions of the S.D.E.O. (Subdivisional Education Officer), Jahanabad, opposite party No. 8, regarding the proposed election of the guardians' representative to be held in pursuance of the order Annexure D. The petitioners claim to be guardians of certain students of the Arwal High English School. The school was managed according to the provisions contained in the instructions and resolutions published in the Bihar Gazette Extraordinary dated the 23rd March, 1959, which had statutory force under the provisions of Section 8(2) of the Bihar High Schools (Control and Regulation of Administration) Act, 1960 (Bihar Act XIII of 1960). It has been alleged further that until rules would be framed by the respondent State of Bihar in exercise of its legislative powers, the provisions of the Bihar Education Code (7th edition) and the instructions and resolutions referred to above were deemed to be statutory rules made under the said Act and were treated to be part of the statute by referential incorporation.

2. The petitioners have also stated that opposite party No. 4 Haridwar Singh had a hostile attitude towards the Managing Committee of the school, the headmaster, some members of the teaching staff and the students in general. He was witness for one Dineshwar in a criminal case which ended in his conviction and he was also proceeded against u/s 107, Code of Criminal Procedure. He manoeuvred to get himself nominated to the Managing Committee and against his nomination several telegrams were addressed to the higher authorities such as the Chief Minister of Bihar, the Education Minister of Bihar and the Director of Public Instruction, Bihar (marked A, A/1 and A/2 for identification). On the 1st of July, 1962, the Director of Public Instruction, Bihar, ordered the circulation of a cyclostyled copy of Resolution No. 17714, dated the 28th September, 1954, and Resolution No. 124, dated the 10th January, 1957, the effect of which was to alter and vary the resolutions of 1954 and 1957. This was by virtue of a resolution which was contained in the forwarding letter which has been appended to the petition (Annexure B). A perusal of Annexure B showed a wide departure in the matter of nomination of the members of the Managing Committee from that contained in the resolutions of 1954 and 1957 under which the Managing Committees were constituted.

3. On the 21st of August 1963, the Director of Public Instruction, Bihar forwarded to the Sub-divisional Education Officer, Jahanabad, names of the new members of the Managing Committee of the School which was reconstituted in pursuance of the resolutions contained in Annexure B, who are opposite party Nos. 1 to 4, namely, the Subdivisional Officer, Jahanabad, the Deputy Inspector of Schools, Jahanabad, Shri Shah Mohammad Umair of village Makhdumpur Kabir and Shri Haridwar Singh of village Bakhtari. The reconstituted Managing Committee was to elect a guardians' representative and notice was issued to that effect fixing the 5th of September 1963, as the date of election. The petitioners claim to be the prospective candidates and made a grievance that their interests would be highly prejudiced by the nomination of the aforesaid persons, inasmuch as members were introduced into the Managing Committee on political and other extraneous considerations. Particular emphasis, however, has been laid against the nomination of Haridwar Singh as a person who should not have been introduced into the Managing Committee, as also against Shah Md. Umair, inasmuch as he started a rival high school at a distance of less than a mile from the Arwal High English School, which was in violation of the standing instructions of the Education Code. This step on his part brought in unhealthy rivalry between the two institutions and caused irreparable injury to the interest of the Arwal High English School. The nomination of opposite party No. 4 was challenged as mala fide and in violation of the instructions regarding nomination of members to the Managing Committee contained in the paper marked E for identification.

4. The opposite party put in appearance and a counter-affidavit was filed on behalf of opposite party Nos. 3 and 4, Shah Md. Umair and Haridwar Singh, The damaging statements contained in the petition against them have been sought to

be controverted. It is, however, unnecessary to go into these matters because the question raised before us by the learned Counsel for the petitioners centres mainly on the validity of the resolution contained in Annexure B.

5. It may be stated that this is one of a series of applications which have been filed in this Court against the aforesaid resolution contained in Annexure B, and objections to the validity of this resolution have been put forward in various forms. In Misc. Judl. Case No. 716 of 1963 (Chaudhary Ram Prasad Sharma v. State of Bihar) since reported in 1964 BLJR 722 the question raised was that the notification of the State Government, No. 1460, dated the 13th May, 1963, published in the issue of the Bihar Gazette dated the 2nd (sic) May, 1963, was invalid, on the ground that the State Government purported to amend the resolution dated the 31st March, 1958, of the Education Department, which had the force of a statutory rule u/s 8(2) of the Act by administrative action, and not by making a rule in accordance with the procedure prescribed by Sections 8(1) and 8(3) of the Act. The contention was, however, overruled by a Division Bench and it was held that on facts it was established that the requirements of Sections 8(1) and 8(3) of the Act (Bihar Act XIII of 1960) were fulfilled and that the notification was not issued in exercise of the executive power of the State Government. Mr. Radha Raman appearing for the petitioners has not raised that, question afresh

6. Learned Counsel, however, contended that in the aforesaid Miscellaneous Judl. Case No. 716 of 1963 (Pat) a question ought to have been raised but was not raised, and which would go to the root of the validity of the notification which is the same as what is contained in Annexure B, He has contended that what the Government purported to do was ultra vires, because Section 5 of the Act XIII of 1960, the Bihar High Schools (Control and Regulation of Administration) Act, suffers from excessive delegation of power Section 5 of the Act stands 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 re-constitution 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 dis-solution."

Sub-section (1) has come in for criticism from the learned counsel on the ground that for the Legislature to lay down that the managing committee would be constituted in such manner as may be prescribed is not sustainable in law. The Legislature itself should have laid down the principle on which the managing committees could be constituted and the executive authority might be entrusted with the task of constituting the managing committee. As it is, however, the power has been given to the executive government in an excessive measure and this defeats the object of this Act itself which was enacted to control and regulate the administration of High Schools other than schools owned by the State Government and matters connected therewith. Learned counsel, however, has not brought to my notice any specific authority in support of his contention. He has relied upon the general principle of excessive delegation.

In my opinion, the contention of the learned counsel cannot be accepted, because the principle of delegated legislation and the limits put upon the power of the Legislature to delegate generally concerns the power to make rules, regulations, by-laws etc., which would amount to delegation of legislative authority if the consequence is abdication of legislative function by the legislature in favour of any other authority on broad questions of policy-making. In the present case, however, the policy concerned was that of the reconstitution of the managing committee, and not how it would be formed and who would be the persons to be taken on the managing committee. This cannot be regarded as a matter of making delegated legislation but only a question of the conferment of discretion on the executive in regard to an administrative matter, when the Legislature has in the enactment itself provided for the policy of law that managing committees of the Schools would be constituted under the direction of the Government by making rules prescribed for the purpose which, as a matter of safeguard, would also be placed on the table of the Legislature duly and which would be statutory rules.

It has been so laid down in a series of decisions, such as *Atma Ram Budhia Vs. State of Bihar*, in which it was held that the choice of the officer concerned might be left by the statute to the State Government and the executive authorities might make such a nomination and that such powers conferred upon the executive authority would not be construed as the case of delegation of legislative power. The principle of delegated legislation and the restriction upon the powers of the Legislature to delegate were laid down in clear terms in *In re Article 143 Constitution of India and Delhi Laws Act, (1912) etc.* AIR 1951 SC 332 vide also *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, and *Virendra Vs. The State of Punjab and Another*, . In *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*,

the position is established in a pointed form inasmuch as it was a case of fixing minimum wages for a certain area. The Legislature recognised the policy of fixing minimum wages but its application to particular areas was left to the executive authorities and this was upheld as valid legislation and not a case of delegated legislation which might be struck down as illegal or ultra vires. The matter is now so well settled that it is unnecessary to elaborate it further.

7. Learned counsel has urged in the next place that the decision of the Supreme Court in the case of *Bisheshwar Dayal Sinha v. University of Bihar*, Civil Appeal No. 279 of 1964, dated 24-4-1961(SC) has made it clear that institutions which have been founded by non-government agencies cannot be subjected even by an Act passed by the Legislature so as to impose conditions which are not reasonable and legitimate. Reliance has been placed on the following passage:

"The position is substantially different where collegiate institutions are started by other autonomous bodies and they seek admission or affiliation to the University. In regard to this class of collegiate institutions, their institution as well as their management and maintenance is not the direct concern of the University; that is the concern of the autonomous educational bodies which have sponsored them and which have undertaken the task of instituting, managing and maintaining them it is, of course, true that when admitting or affiliating such institutions, the University can impose reasonable and legitimate conditions subject to the provisions of the Act, and it follows that on the failure of such colleges either to conform to those conditions or on their committing breach of any of those conditions, it would be competent to the University under its relevant powers to disaffiliate them and deny them the status of admitted colleges; not constitute the Governing Bodies of such autonomous educational bodies. The University may insist upon the observance of conditions in respect of the composition of the Governing Bodies, but it cannot direct the composition of the Governing Bodies itself; the two powers are distinct and separate. Whereas in the case of institutions started by the University, the University has to decide who would constitute the Governing Bodies, in the case of affiliated institutions, the University can only lay down conditions and regulations which must be satisfied before the Governing Bodies are constituted; who should constitute the Governing Bodies is a matter for the autonomous educational bodies, which sponsor the collegiate institutions to decide; how they should be framed, on what principles, and on what basis, are matters which may well form the subject-matter of conditions imposed by the University while admitting such colleges or affiliating them."

It has been contended that, no doubt, it is true that this observation was made in considering the validity of certain statutes passed by the Bihar University regarding the reconstitution of the Governing Bodies of affiliated colleges, but the principle laid down in that case should govern the relationship between the government and a non-government school recognised by the government as well. In the present case also, the Director of Public Instruction has actually

reconstituted the governing body, nominating certain persons, and accordingly this case also would be covered by the principle formulated by their Lordships of the Supreme Court in the above case relating to the Rajendra College, Chapra, Civil Appeal No. 279 of 1964 (SC). Their Lordships have further said:

"The basis on which a Governing Body should be constituted is very different from nominating several persons on the said Governing Body"

That was struck down by their Lordships. In the present case also, the Director of Public Instructions has nominated certain persons and himself reconstituted the Managing Committee. It is true, no doubt, that so far as the principle governing the relationship between the affiliated college and the University is concerned it is the same as that between a non-government school and the Department of Education and some support may be derived for the argument of the learned Counsel for the petitioners from the above quoted observation of the Supreme Court, but the judgment has got to be read as a whole and in the same judgment their Lordships have observed as follows"

"But the question which we have to decide in the present appeal is not whether the University or the Vice-Chancellor should not have such power; the question is whether such a power can be claimed by the Statute under the provisions of the Act, and that question in our opinion, admits of only one answer under Act as it now stands. The Legislature may consider whether any suitable amendment should be made in that behalf. That, however, is irrelevant to the point with which we are concerned."

It is thus clear that then Lordships struck down down the impugned statute on the ground that the statute was not in terms of sections 30 and 49 of the Act which dealt with the making of statutes by the University; and that was the reason why this observation was made in the judgment. In the present case, however, Section 5 of Act XIII of 1960 in clear terms lays down that Managing Committees shall be constituted in accordance with the rules to be prescribed under the Act, and the rules were duly promulgated; as such it cannot be said that the judgment of the Supreme Court in Civil Appeal No. 279 of 1964 (SC) read as a whole, lends any support to the contention urged on behalf of the petitioners by the learned Counsel. This argument also is overruled.

8. In the result, therefore, it is clear that there is no merit in the application and it must be dismissed.

G.N. Prasad, J.

9. I agree.