
(1969) 03 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 1169 of 1968

Ramtiha Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-03-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) 17 BLJR 615

Hon'ble Judges : Shambhu Pd. Singh, J; S.N.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.N.P. Singh, J.—This is an application under Article 226 of the Constitution on behalf of eight persons, who claim themselves to be the guardians of certain students reading in the Government Aided High School, Arwal, in the district of Gaya. The petitioners have challenged the constitution of the Managing Committee of the said school as contained in Annexure "1".

2. As stated in the application, the school in question was established in the year 1942. Before the constitution of the Managing Committee, which is under challenge, there was an Ad-Hoc Managing Committee consisting of six persons. The Subdivisional Officer (Civil), Jehanabad, was the President of the Ad-Hoc Managing Committee. It appears that the Bihar High Schools (Constitution, Powers and Functions of Managing Committee) Rules, 1964 as modified by the State Legislature, hereinafter to be called "the Rules", was "published in the Bihar Gazette, Extraordinary, dated the 24th of May, 1967. As provided under Rule 3(6) of the Rules, two guardians were to be elected in the manner laid down in Rule 7. In the meeting convened by the Subdivisional Education Officer on the 21st of January, 1968, two persons, namely, Sri Bimal Pandit and Md. Sahabuddin, were selected as guardians" representatives by lot in accordance with Rule 7(3). As stated in the application, the meeting for the co-option of one member of the State Legislature, as required under Rule 3(7) of the Rules, was

held on the 4th of April, 1968, and Mr. Shah Jhohare, the then M.L.A., was co-opted. The petitioners have also alleged in the application that in the meeting held on the 3rd of May, 1968, for the cooption of three persons of the locality interested in education, Sri Jamuna Prasad, Sri Chandra Sekhar Singh and Sri Ramlakhan Singh were illegally taken in the Managing Committee of the School in question. According to the petitioners, the aforesaid three persons and Mr. Shah Jhohare, M.L.A., are communists and they are not interested in the welfare of the school. According to the petitioners, the participation of the two guardians' representatives in the meeting dated the 4th, of April, 1968, 3rd of May, 1968, and the 14th of May, 1968, vitiated the proceedings of the meetings on those dates.

3. The main ground on which this application is founded is that Rule 3(7) and Rule 7(3) of the Rules are ultra vires. In *Maheshwari Prasad Singh v. The State of Bihar and Ors.* C.W.J.C. No. 81 of 1969 disposed of 21-2-1969, the question regarding the validity of Rule 7(3) was considered and it was held that the rule is valid. According to Rule 3(7) of the Rules, one member of the State Legislature representing or residing in the Assembly constituency in which the School is situated is to be co-opted by all hereditary members and life members and an officer of the Education Department of the State Government to be nominated by the President of the Board of Secondary Education, two donors duly elected in the manner laid down in Rule 6, if available, and two guardians to be elected in the manner laid down in Rule 7. According to learned Counsel appearing for the petitioners, the Headmaster and the teachers' representative have been arbitrarily excluded from taking part in the co-option of the member of the State Legislature and as such Rule 3(7) is invalid. I do not find any substance in this contention. The Headmaster or the teachers' representative cannot claim as a right participation in the special meeting convened under Rule 8 for the purpose of co-option of the member of the State Legislature in the Managing Committee. Learned Counsel appearing for the petitioners has not pointed out anything from the Rules or from the provisions of Bihar Act XIII of 1960, under which the Rules have been framed, to show that the exclusion of the Headmaster and the teachers' representative from the participation in the special meeting convened under Rule 8 for the purpose of co-option of the member of the State Legislature is consistent with the other provisions of the Rules or the Act. It is significant to state that the Headmaster is the ex-officio member of the Managing Committee because of the provisions made in the Rules and the teachers' representative is to be appointed by the Headmaster in accordance with the Rules. The contention of learned Counsel that Rule 3(7) is invalid cannot, therefore, be accepted,

4. Two other points have been taken in the writ application which have to be considered. It is alleged that Sri Ram Payare Singh was the seniormost teacher of the school and as such the appointment of Sri Sarjoo Prasad Singh as the teachers' representative was illegal and not in conformity with Rule 5. According to Rule 5(1) the appointment of teachers' representative is to be made by the Headmaster, in rotation, strictly in order of seniority according to the length of

service, in the school for a period of one year from the date of his appointment. Although the petitioners have alleged that Sri Ram Payare Singh is the seniormost teacher in the school, in the counter-affidavit filed on behalf of opposite party No. 4 it has been stated that Sri Ram Payare Singh was not entitled to be taken as a teachers' representative because there was a break in his service for about six years. This fact has not been further denied on behalf of the petitioners and, at any rate, it is now a disputed question of fact. I, therefore, do not find any substance in the above point.

5. The selection of two guardians' representatives in the Managing Committee of the school has been challenged also on the ground that no notice had been given to the guardians in general including the petitioners about the date and place of the meeting in spite of the written direction of the Subdivisional Education Officer, Jehanabad, to the effect that each of the guardians should be informed immediately by a letter under postal certificate. In the supplementary affidavit filed on the 10th of March, 1969, a copy of the letter of the Subdivisional Education Officer addressed to the Headmaster of the said school and others directing that notice should be issued to the guardians has been annexed (Annexure 2). Another affidavit has been filed on behalf of the petitioners today in which it has been asserted that the petitioners could not attend the meeting in which the guardians' representatives were selected for want of information. It is further stated in that affidavit that petitioner No. 1 enquired from the Headmaster whether notices were issued to the petitioners and other guardians and in his reply (Annexure .3) the Headmaster has stated that no notice was sent by post. In the counter-affidavit filed on behalf of opposite party No. 4 it has been stated that the guardians of the students reading in that school were served with notice by post and the guardians participated in the meeting for the selection of the guardians' representatives. It is further stated that the name of petitioner No. 2, Chandrika Singh, who was present in the meeting, was proposed for selection as a guardians' representative but he was not selected. As the facts are disputed, it is not possible for this Court to go into the question whether the meeting in which the two guardians' representatives were selected was duly held after giving notices to the guardians " or not. In that view of the matter, the application cannot succeed on the second point which has been urged by learned Counsel appearing for the petitioners.

6. I may point out that in this application the two guardians' representatives, namely, Sri Bimal Pandit and Md. Sahabuddin, and the teachers' representative, namely, Sri Sarjoo Prasad Singh, have not been made parties. The validity of the selection of the guardians' representatives and the appointment of the teachers' representative, therefore, cannot be effectively considered in their absence. On this preliminary ground also this application is liable to be dismissed.

7. For the reasons stated above, I do not find any merit in this application and it is accordingly dismissed with costs. Hearing fee Rs. 100/- payable to opposite party No. 4.

Shambhu Prasad Singh, J.

8. I agree.