
(1959) 02 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 213 of 1957

S. Ziaullah

APPELLANT

Vs

Sri R.S. Senapati and Others

RESPONDENT

Date of Decision : 17-02-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 344
Orissa Education Code — Article 34, 35, 41

Citation : (1959) 25 CLT 429

Hon'ble Judges : Narasimham, C.J.; Das, J

Bench : Division Bench

Advocate : K.S.R. Murty, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is a petition under Article 226 of the Constitution by one of the members of the previous Managing Committee of an educational Institution in Cuttack town known as Syed Seminary, against the order of the Inspector of Schools, Central Circle, dated 25-11-1957 reconstituting the Managing Committee of the Said School under Article 41 of the Orissa Education Code.

2. The material facts are as follows. Syed Seminary is a Government aided secondary school under the management of a S. Ziaullah v. R.S. Senapati and Ors. Managing Committee. The Inspector of Schools, on receipt of several complaints issued notice to the Managing Committee in his confidential letter No. 9649 dated 19-12-1956 (Annexure-H) calling upon the Committee to show cause why it may not be dissolved and reconstituted in terms of Article 41 of the Education Code. In that show cause notice he has specifically referred to the fact that the students of the School had gone on strike for a short time, that there was some stir among the local public and that a sub-committee appointed by the public had reported that "the institution is deteriorating due to rivalry between the two factions of the Muslim community and also the ultra-communal outlook

of the present Managing Committee." The Petitioner and other members showed cause, but the Inspector was not satisfied with the same. Then he consulted the District Magistrate of Cuttack who by his memo dated 23-11-1957 suggested that a new Managing Committee may be constituted. That suggestion was accepted by the Inspector of Schools.

3. Article 41 of the Orissa Education Code under which the Inspector claims to have acted is as follows:

In case of disputes between the Managing Committee of a school and the local public or among the members themselves of the Managing Committee or Advisory Committee the Inspector of Schools Should obtain the opinion of the District Magistrate before giving his decision. The Inspector of Schools may reconstitute the Managing or Advisory Committee if, after consulting the District Magistrate, he considers it necessary to do so.

4. Mr. K.S.R. Murty in support of this petition raised two interesting questions:

(i) The reconstitution of the Managing Committee was not made in accordance with the provisions of Article 41 and is consequently invalid;

(ii) Article 41 does not apply to an aided educational institution but applies only to a Government School.

5. Article 41 quoted above confers power on the Inspector of Schools, in consultation with the District Magistrate, to reconstitute the Managing Committee of a School if (i) there is dispute between the Managing Committee and the members of the local public or (ii) there is a dispute among the members of the Managing Committee itself. In the order of the Inspector of Schools dated 25-11-1957 the reasons for reconstituting the Committee under Article 41 have not been stated. Similarly, in memo No. 2796 (2)C dated 23-11-1957 from the District Magistrate, Cuttack, to the Secretary of Syed Seminary a copy of which was sent to the Inspector of Schools, reconstitution of the Committee was recommended by the District Magistrate on the ground *S. Ziaullah v. R.S. Senapati and Ors.* that (i) various irregularities were committed by the School authorities and (ii) the School authorities had paid a deaf ear to the instruction given by the Higher Authorities. It was further revitalising the set-up of the Managing Committee and for safeguarding the interests of the School the District Magistrate considered it desirable that the Committee should be reconstituted. According to Mr. Murty the aforesaid reasons given by the District Magistrate, for reconstituting the Managing Committee, are outside the scope of Article 41 of the Orissa Education Code and that in as much as the Inspector of Schools acted on the suggestion of the District Magistrate his order also should be held to be outside the scope of that Article. It would perhaps have been better if the District Magistrate of Cuttack and the Inspector of Schools had conformed strictly to the language of Article 41 while writing out the order reconstituting the Managing Committee. But if their letters are construed in the light of the original "show cause" notice dated 19-12-1956 (Annexure H) there can be no doubt that the

requirements of Article 41 have been complied with. In that notice the Inspector alleged that there was a dispute between the Managing Committee and the local public on the one hand and that there was also an internal dispute amongst the members of the Committee and that these facts warranted the reconstitution of the Committee in the interest of the institution. His omission to repeat these grounds in his final order dated 25-11-1957, must, in the circumstances of this case, be held to be only an irregularity. The Inspector was fully aware of the conditions pre-requisite to the exercise of his powers under Article 41 of the Orissa Education Code and the old Managing Committee was also clearly informed of the grounds on which the Inspector proposed to take action against its members. They were also given a reasonable opportunity to show cause against that action.

6. The second contention of Mr. Murty also seems to be equally untenable. There is nothing in the language of Article 41 to show that it applies only to Government Schools and not to aided Schools. Mr. Murty however relied on Article 35 which says that in respect of aided Schools the power of the Inspector was only to make a recommendation with regard to the constitution of the Managing Committee and that the final authority for reconstituting it was either the Director of Public Instruction or the Board of Secondary Education. But Article 41 also occurs in the same Chapter as Article 35 and hence both of them should be construed harmoniously. So construed, it would appear that reconstitution of the Managing Committee, for the special reasons mentioned in Article 41 may be made by the Inspector in consultation with the District Magistrate, where as reconstitution for other reasons, or constitution of the Managing Committee for the first time, may *S. Ziaullah v. R.S. Senapati and Ors.* require the approval of his superior authority, his function being merely recommendatory as laid down in Article 35. Mr. Murty then drew our attention to Articles 34, 289, 344 and 348 and urged that so far as private aided Schools were concerned the Inspector's powers were limited. He may withdraw grants if they do not comply with his instructions but Article 344 specially enjoins on him that interference with such Schools should be as little as possible. He therefore urged that by implication it must be held that the drastic power of reconstituting the Managing Committee conferred by Article 41 should be limited to Government Schools and not to aided private institutions.

7. I am unable to accept this argument. If the various Articles of the Education Code are carefully scrutinised it will be found that, where a particular Article is intended to apply only to Government Schools there are express provisions to that effect. Similarly, where some Articles are meant to apply exclusively to aided School, they expressly say so. But whenever some of the Articles are intended to apply to all classes of Schools (whether Government or aided) the general expression a School or any School is used. Article 41 does not contain any such limiting expression. It gives powers to the Inspector of Schools to reconstituted the Managing Committee of "a School" if certain conditions mentioned in that Article are satisfied. There is no justification to hold, by implication, that private

Schools are excluded from the scope of that Article. The requirement about consultation with the District Magistrate safeguards any institution from arbitrary or capricious action on the part of the Inspector.

8. I would therefore dismiss this petition, but there will be no order for costs.

Das, J.

9. I agree.