

(1972) 08 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 844 of 1972

Sheo Kumar Prasad

APPELLANT

Vs

President of Board of Secondary Education and Others

RESPONDENT

Date of Decision : 24-08-1972

Acts Referred:

Bihar High Schools (Constitution, Powers and Functions of Managing Committee)
Rules, 1964 — Rule 17A, 39

Citation : AIR 1973 Patna 121

Hon'ble Judges : S. Sarwar Ali, J

Bench : Single Bench

Advocate : Braj Kishore Prasad, No. II and Yogesh Chandra Verma, for the Appellant; T.K. Jha, Standing Counsel No. II, J. Krishna and Baidya Nath Prasad, No. II, for the Respondent

Final Decision : Allowed

Judgement

Sarwar Ali, J.—The petitioner is the Secretary of the Managing Committee of the Town High School, Hajipur, in the district of Muzaffarpur. He is also, according to the averment in the petition, entitled to be declared as a life member and donor, although, there has been no declaration in that regard as yet. The Managing Committee of the school, it appears, was completely constituted on 16-5-1969. On 14-6-1972, the petitioner received an order dated 8-6-1972, passed by respondent No. 1. A copy of the said order is annexure "1" to the writ application. The annexure in question constitutes an ad hoc committee for the management of the school. The view of the authorities is that after the expiry of three years from the constitution of the managing committee, the managing committee ceases to have legal existence, if a new managing committee has not been duly constituted. In that situation the President of the Board of Secondary Education has authority to constitute an ad hoc committee to carry on the management of the school. It was on the basis of this view that the order contained in the impugned annexure was passed.

2. Learned counsel for the petitioner contends that Section 5 of the Bihar High Schools (Control and Regulation of Administration) Act, 1960 (hereinafter to be referred to as the Act) contemplates the management of schools through a properly constituted managing committee. Once a managing committee has been duly constituted, the vacancies therein have to be filled in in accordance with the provision of the Act under the rules. The failure to fill those vacancies does not result in the managing committee becoming defunct and the President does not get any legal authority to constitute an ad hoc committee if there is a failure to appoint, elect or co-opt new members. Consequently it was contended that the power to appoint an ad hoc committee can only arise u/s 5 (3) of the Act or under Rule 39 of the Bihar High Schools (Constitution, Powers and Functions of Managing Committee) Rules, 1964 (hereinafter to be referred to as the Rules); and the impugned action is not covered either by Section 5 of the Act or Rule 39.

3. These propositions were contested by learned Standing Counsel No. 2 on behalf of respondents 1 and 2. Mr. Baidya Nath Prasad No. 2 supported the contention of the learned Standing Counsel and advanced further arguments in support of the stand taken by him. The substance of the contentions is that a managing committee ceases to have any legal existence on the expiry of three years from the date of the constitution. Further there is power to appoint an ad hoc committee under Rule 39 of the Rules even in circumstances, similar to those arising in the present case. In the counter-affidavit filed on behalf of respondent No. 1 as also on behalf of respondent No. 4 there are some statements which indicate that the managing committee in question was not functioning properly. This aspect of the matter need not be considered in this writ application because the impugned order (annexure I) has not been passed u/s 5 (2) of the Act.

4. It may be necessary to analyse some of the sections of the Act and some of the clauses of the Rules. Section 5 of the Act clearly envisages that for every high school there shall be a managing committee constituted in such manner as may be prescribed. So far as the manner of constitution of the managing committee is concerned that has been dealt with by the rules. The said section also authorises, in the circumstances, mentioned in Clause (2) of Section 5 suspension or dissolution of a managing committee. Under Sub-clause (3) the Board has been given a power after such suspension or dissolution to appoint a person or persons to exercise the function of the managing committee. Persons so authorised are generally described as members of the ad hoc committee. Sub-clause (4) of the section enjoins the constitution of a managing committee thereafter within a period of one year from the date of dissolution, if there be any dissolution. There is a provision regarding appeal in Section 6 of the Act.

5. The rules contemplate two categories of schools so far as managing committees are concerned. They are proprietary schools and schools other than proprietary schools. Rule (3) lays down the constitution of a managing committee of a school other than a proprietary school. We are here concerned

with such a school. The maximum number of the members of the managing committee under the rules may be twelve and the various categories of members have been described in this rule. In some cases there may be hereditary and life members. The Headmaster is the ex-officio member of all the managing committees. The rest are to be appointed, nominated, elected or co-opted. A teachers' representative is appointed by the Headmaster in the manner laid down in Rule 5 and a teacher so appointed remains a member only for one year. The basic idea is that teachers should be able to participate in the management of the school by rotation. An officer of the Education Department has to be nominated by the President of the Board of Secondary Education. Two donors, if available, and two guardians are to be elected as laid down in the Rules 3 (5) and 3 (6). One member of the State Legislature representing or residing in the Assembly Constituency in which the school is situated has to be co-opted. So also there is co-option of three other members of the locality, as laid down in Sub-clause (8), who are interested in education. So far as the donors, guardians, member of the State Legislature and persons interested in the education are concerned they have terms of office fixed by Rule 17-A and this is three years from the date of constitution of the managing committee. The constitution of the managing committee is complete on the election of the Secretary and the President. The result of this analysis is that in most of the schools three categories of members may be holding office as members of the managing committee although, the categories covered by Rule 3, Sub-clauses (5) to (8) may cease to be the members of the managing committee on the expiry of three years from the date of the constitution of the managing committee. This is so because so far as hereditary and life members are concerned there is no period fixed as in other case. The Headmaster being ex-officio member will always be there in the committee whatever be the constitution of the committee. Similar is the position with respect to teachers' representatives who, I have already noticed, are appointed for a period of one year by rotation. So far as an officer of the department is concerned, although, his period expires after three years there can be no difficulty in filling up the vacancy, for the President can fill up such vacancies as soon as they fall vacant. It is thus clear that three or four members of managing committee will not retire or are not likely to retire even when the members covered by Clauses 5 to 8 have retired by expiry of the period as fixed by Rule 17-A (1). It is therefore clear that the whole of the managing committee does not cease to have any legal existence on the expiry of three years from the date of the constitution of the committee. To that extent the argument of the learned counsel for the petitioner is correct and the argument of the learned counsel for the respondent cannot be accepted. It will also be pertinent to notice that so far as election and co-option of persons mentioned in Clauses (5) to (8) of Rule 3 are concerned steps for election and co-option have to be taken by the education authorities (vide Rules 6 (1) and (2), 7 (1) and (8)). It is not the managing committee which is really responsible for these elections or co-options. Of course when a meeting for the purpose of co-option is held the members entitled to participate in the co-option will have the option of participating in such

a meeting. What is being emphasised here is, that so far as initial steps regarding either election or co-option aforesaid are concerned it is for the educational authorities to take initiative in the matter. Steps, naturally, should be taken to see that nomination, election or co-option of the members takes place in due time. I am thus of the view that it cannot be held on the basis of Rule 17-A that the entire managing committee ceases to exist on the expiry of three years from date of constitution of the committee.

6. The second contention raised on behalf of the respondents may now be noticed. Reliance was placed on Rule 39 for the purpose of showing that the President has power to appoint an ad hoc committee, in the circumstances as are present in this case. Rule 39 is as follows:

"Where a Managing Committee is not constituted, in accordance with these rules, within the period specified in 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 person as may be appointed by the President of the Board of Secondary Education for the purpose."

The plain reading of this rule will show that the power envisaged to be exercised under this rule is when a managing committee is not constituted within the period specified in Rule 37. Reference therefore is necessary to Rule 37. Rule 37 is 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".

This rule clearly indicates that it deals with and has under contemplation only the constitution of the first managing committee after the publication of the rules. It cannot therefore be said that the power to appoint an ad hoc committee under Rule 39 exists when the period of three years expires from the date of constitution of a duly constituted managing committee.

7. It is clear therefore that so far as the impugned annexure is concerned it is not sustainable. So far as the power to deal with exceptional cases requiring intervention of the Board is concerned the same has been dealt with in Section 5 (2) of the Act. It may be, that in certain circumstances a power analogous to Rule 39 may be necessary for the proper management of the school or for preventing abuse of exercise of power on account of default or hinderance put by the existing managing committee in the election co-option etc., of new members. Where a full constitution of the managing committee on the expiry of the terms of the members of the committee covered under Rules 5 to 8 is not possible, there should be power with the authorities to take extraordinary steps, is a matter that can only be dealt with either under the Act or under the rules. But if there is no such power under the Act or under the rules, (and I have found that there is no such power) it is not possible to hold inferentially that there is such a power with the President or the Board. If the Legislature or its delegatee think

that such power is necessary they can take appropriate steps in accordance with law.

8. In the result, the application is allowed. The impugned order (Annexure 1) is quashed. There will be no order as to costs in the circumstances of the case.