
(1997) 06 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 6019 of 1996

Smt. Nili Choudhury	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 05-06-1997

Acts Referred:

Assam Government Aided College Management Rules, 1976 — Rule 2

Citation : AIR 1998 Guw 114

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : B.K. Sharma and R. Sharma, for the Appellant; P.C. Deka and S.K. Medhi, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This writ application has been filed challenging the notification dated 20-11-96 issued by the Joint Secretary to the Government of Assam, Education Department in exercise of the power under Rules 2 and 3 of the Government Aided College Management Rules, 1976 constituting a Special Body for Banikanta Kakalt College, Nagaon, District Barpeta and dissolving the earlier Governing Body constituted vide order dated 20-12-94.

2. The petitioner herein is a member of the earlier Governing Body of Bani Kama Kakati College, Nagaon. On 2-12-94 the Director of Public Instruction, Assam, Kahilipara, Guwahati-19, reconstituted a Governing Body for the aforesaid College Vide Annexure-A. Thereafter by the impugned Notification, Annexure-B, earlier Governing Body was dissolved and a new Body was constituted. It is the legality and validity of this order which has been challenged in this writ application.

3. I have heard Shri B.K. Sharma, learned Advocate for the petitioner, Shri. H.N. Sarma, learned Advocate for Respondents No. 1,2 and 3, Shri P. C. Deka, learned Advocate for Respondent No. 12 and Shri Chutia, learned Advocate for

Respondent No. 4.

4. Shri Sarma submits as follows :--

(i) That a Governing Body constituted earlier can be dissolved under the Rules only under special circumstances. No such special circumstances have been established in the instant case and as such the dissolution of the earlier Governing Body in 1994 is an arbitrary exercise of power and that should be quashed.

5. On the other hand Shri Dekha submits that the earlier constitution of the Governing Body in 1994 by the Director of Public Instruction, Assam, Kahilipara, Guwahati-19 is absolutely without authority of law and that cannot be deemed to be Governing Body in the eye of law and as such that exercise of power to constitute a Governing Body is not valid exercise of power, it being an illegal body. The authority had to issue the fresh notification. Shri Dekha in support of his contention places reliance in Rule 2 of the Government Aided College Management Rules, 1976. The Rule 2 is quoted below :--

"2. Every Government Aided College shall be governed by a Governing Body the constitution of which has been approved by the Director of Public Instruction, Assam save in cases where the Secretary to the Government of Assam in the Education Department allow as an exception under special circumstances."

5-A. On the other hand Shri Sarma in support of the authority of D.P.I, places reliance in Rule 8 of the Rules which is quoted below :--

"8. The Director of Public Instruction, Assam may dissolve and reconstitute a Governing Body at any time, if the circumstances so demand. Pending reconstitution of the Governing Body the Director of Public Instruction may take over the control and management of a College for a period not exceeding three months and make arrangement for the management of the College in such a manner as considered fit by him. This period may be extended for a further period of three months with the approval of the Government."

This power of reconstitution by the D.P.I, is subject to existence of circumstances which necessitates the reconstitution of the Governing Body by the D.P.I. The order of reconstitution does not reflect/depict such circumstances. No record was produced to establish the existence of such circumstances. Further in para 2 of the Writ application it is stated that it was constituted in exercise of power under Rules 2 and 3. There is no whisper regarding exercise of power under Rule 8. In the absence of it at the time of hearing the petitioner cannot urge this point by way of surprise. No doubt wrong mentioning of a Rule in the order or in the petition will not invalidate an order, if the source of power can be read out in the statute or Rule. Rule 2 is the normal Rule for constituting a Governing Body. Rule 3 provides who will be the members of such a Body. Rule 8 carves out an exception, provides power to D.P.I, to reconstitute a Governing Body, if the circumstances so demand. (Underlined by me). But as indicated above no such

circumstance has been reflected in the order, no record has been produced, and there is nothing also in the writ application. So this Body cannot be deemed to be a regularly constituted Body under the Rules as claimed in the writ application. If the authority wants to replace such an irregular body, that itself will be a special circumstance, the authority in its wisdom may not like the continuance of an irregular state of things. The circumstances mentioned in Rule 8 may be of a myriad variety, but it must have relevance with the object and purpose for which a Governing Body is constituted. Something which is unreasonable and absurd cannot be a circumstance demanding reconstitution.

Shri Sarma places reliance in *Kiritbhai Nandvadan Bhatt and Others Vs. Ahmedabad Municipal Corporation and Others*, That was a case where a Sub-divisional Welfare Board for Scheduled Castes was constituted on 28-7-94 and that was cancelled by a W.T. Message on 4-8-94, within a few days. There was no Rule in the field, it was purely an administrative action. The Court came to the finding that no reasons have been given by the authority for cancelling the earlier notification and as such the order was quashed. The case in hand is different, here there is a set of Rules and the Rules mandate things to be done in a particular manner on existence of certain state of things. That was absent when the Body was reconstituted in 1994 and the authority wanted to wipe out in 1996 by issuing Annexure-B. So this case does not help the petitioner.

6. Shri Deka submits that the Director of Public Instruction cannot constitute a Governing Body. The Director of Public Instruction is only an approving authority. In the instant case Shri Deka submits that Annexure-A by which the Governing Body was constituted in the year 1994, that is against the provisions of Rule 2. Shri Deka also places his reliance and submits that under Rule 3 of the Assam Aided College Management Rules, 1976 which provides that the Secretary to the Government of Assam, Education Department sanctions a special body under special circumstances and that rule itself provides who will be the members of such a Governing Body. In the instant case the Governing Body was constituted by the State of Assam and the Notification was issued by the Joint Secretary to the Government of Assam. Shri Deka produced before me the Assam Rules of Executive Business, 1968 which provides under Rule 2 (i) as follows:--

"2(i).-- "Secretary" means a Secretary to the Government of Assam and includes Chief Secretary, Additional Chief Secretary, Special Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary and an Under Secretary."

7. He also draws my attention to Rule 12 of the aforesaid Rules, which inter alia, as follows :--

" 12. Every order or instrument of the Government of the State shall be expressed to be made in the name of the Governor and shall be signed either by a Secretary, an Additional Secretary, a Special Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or such other Officer as may be specially empowered in that behalf and such signature shall be deemed to be the proper

authentication of such order or instrument."

8. Shri Deka in support of his contention places reliance on the following :--

(1) 1996 (3) GLR 222 (Ruhul Amin v. State of Assam). There also a single Judge of this Court considered Rules 2 and 3 of the Assam Aided College Management Rules, 1976. In that particular case the legality and validity of the constitution of a Governing Body by the Director of Public Instruction was challenged and after considering Rule 2 in paragraph 17 the law has been laid down as follows :--

"17. On going through the relevant provisions of the Rules it is clear that the Director of Public Instructions. Assam has power only to give approval to the Governing Body that may be constituted. The Director of Public Instructions does not have any power to constitute or reconstitute a Governing Body on its own. Secretary, Education Department of the Govt. only in a special case may constitute a special Governing Body."

9. The next case relied on by Shri Deka is AIR 1995 SC 115, Chandra Nath Phookan v. State of Assam wherein this Court considered the case of constitution of a Governing Body of a College by the D.P.I., that College was only receiving ad hoc grant and did not receive any grant in aid. This Court found that such a College cannot be deemed to be a Government Aided College and it will not come within four corners of the 1976 Rules and this Court pointed out that in such a situation the Director of Public Instruction has no jurisdiction in the matter of constitution of the Governing Body. This Court went further and held that even assuming that the Rules 1976 apply in that case also the D.P.I., has no power to constitute or reconstitute a Governing Body. Under special circumstances a special body may be sanctioned and that power is with the Secretary to the Government of Assam, Education Department.

10. The last case relied on by Shri Deka is 1997 (1) GLT 338, Dr. Akhil Chandra Sarma v. The State of Assam. This Court considered the Assam Aided College Management Rules, 1976 and in paragraph 19 it has been pointed out as follows:--

"19. On perusal of the relevant 1976 Rules, I find that the DPI has no authority, power or jurisdiction to constitute or reconstitute a Government Body of an Aided College. It has been claimed by the Respondents that pending disposal of this Civil Rule, the said S. B. Deorah College, was brought under Deficit Scheme, which was however, not admitted by the petitioner. Be that as it may, by bringing the said College under Deficit Scheme, the position will not alter. Even if the College was brought under the Deficit Scheme, the DPI shall have no power to constitute or re-constitute a Governing Body as per the said Rules. Therefore, in my opinion, the DPI has also no power of dissolution of a Governing Body unless there is an exceptional circumstance as indicated."

10-A. I respectfully agree with the decision of the learned single Judge of this Court in the earlier three decisions and if that is the position of law the

constitution of the Governing Body vide Annexure-A in 1994 by the Director of Public Instructions, Assam must be deemed to be illegal and in that view of the matter the Government reconstituted the Governing Body by Annexure-B and that is the stand taken by Respondent No. 4 in his affidavit-in-opposition in paragraph 3 it has been stated as follows:--

"In the instant case, the previous Governing Body purported to be constituted by the DPI being illegal and without authority of law pursuant to the Judgment passed by this Hon"ble Court, held that the DPI has no power and jurisdiction to constitute Governing Body of any Aided College, it became necessary to constitute a Special Body of the said College, as per provisions of the said Rules by dissolving the earlier Governing Body purported to be constituted by notification dated 20-12-94."

11. In the Affidavit of Respondent No. 12 also . the same stand has been taken in paragraph 3.

12. Further it is found from the affidavit that the newly constituted Governing Body is functioning, and it will not be in the interest of justice to disturb that position.

13. In that view of the matter there is no merit in this writ application and the same is dismissed. I leave the parties to bear their own costs.

14. As per Judgment of this writ application all the Misc. cases are disposed of.