
(2008) 05 OHC CK 0041
In the Orissa High Court

Sri Sathya Sai Seva Organization and Another APPELLANT
Vs
State of Orissa and Others RESPONDENT

Date of Decision : 08-05-2008

Acts Referred:

Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 — Rule 25
Orissa Education Act, 1969 — Section 7(6)

Citation : (2008) 2 OLR 432

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Judgement

R.N. Biswal, J.—In this writ petition, petitioner No. 1, a philanthropic Society, established a College in the name and style, Sri Sathya Sai College for Women at Bhubaneswar (Opp. party No. 3) in 1981 and the Trust that established the college framed a bye-laws (Annexure-1) for the said College. It is stipulated, in the bye-law that--

The State President of the Sri Sathya Sai Seva Organization, Orissa, shall be the President of the Governing Body and that the President shall nominate the Secretary of the Governing Body and six members.

2. Opp. party No. 3 College came into the grant-in-aid fold in the year 1984 and as such became a non-Government aided College. As per the case of the petitioners, Shri Sibaram Prasad Gantayat (Opp. party No. 4), who was an engineer, managed to become a special invitee of the Governing Body in August 1986 and since then continued to be a member of Governing Body till 2004. On 27.4.1994 he became the President of the Governing Body and continued as such for more than 10 years despite statutory bar. opp. party No. 3 College received about Rs. 70 lakhs as grant from University Grants Commission for the purpose of development of the College, during last ten years. There are reasons to believe that opp. party No. 4 was secreting away the funds of the College. Since opp. party No. 4 inducted himself as the President of the Governing Body

of opp. party No. 3 in 1994, funds of the college have not been audited, even though the bye-law specifically provides that the accounts of the Institution shall annually be audited by a Chartered Accountant duly appointed for the purpose.

3. On or about 10.6.2004, the State Government by notification dissolved the Governing Bodies of all the non-Government aided Colleges including opp. party No. 3 College and took over management of the same. On 24.7.2004 the Sub-Collector, Bhubaneswar (opp. party No. 5) took charge of the management of opp. party No. 3 college under Annexure-3 and continued to act as the President of the Governing Body, but the State Government vide notification dated 1.9.2005, Annexure-4 nominated the presidents of the Governing Bodies of about 80 non-Government aided colleges including opp. party No. 4 as President of the Governing Body of opp. party No. 3 College. According to the petitioners the State Government has no authority under law to nominate president of any non-Government aided college, much less any such college established by Trust. Hence, the Writ Petition is filed to quash Annexure-4, so far as the opp. party No. 3 College is concerned.

4. Opp. party No. 4, in a separate counter affidavit averred that since he was/is an active member of Sri Sathya Sai Trust, Orissa, he was nominated by the said trust to manage the affairs of opp. party No. 3 College. There is no provision under Rule 25 of the Orissa Education (Establishment, Recognition and Management of Private Colleges) Rules, 1991 as amended in the year 2001 for appointing a nominee of the trust as the president of the Governing Body of a college established by it. Moreover, opp. party No. was recommended by Sri Sathya Sai Trust as its nominee to be appointed as the President of the Governing Body of opp. party No. 3 College from 1992 onwards. There is no bar or impediment for the nominee of a trust to become the President of Governing Body of a trust-managed college for more than two consecutive terms. According to opp. party No. 4, opposite party No. 3 college did not receive grant of Rs. 70 lakhs from the University Grants Commission as alleged, on the contrary, it received Rs. 17,98 lakhs till end of 9th plan and the money was spent for the purpose for which it was sanctioned. The funds of the College were duly audited by M/s. A.K. Tripathy and Co., a registered Chartered Accountant Firm up to the end of the financial year 2001. Audit for the subsequent years could not be conducted, because of non-cooperation of the Principal-cum-Secretary of Opp. party No. 3 college. Opp. party No. 4 denied the allegation of secreting away the funds of the College. Accordingly, he prayed to dismiss the writ petition.

5. Opp. party Nos. 3 and 5 jointly filed a counter affidavit, supporting the case of the petitioners. According to them as required under law, Local Fund Audit of the Govt. ought to have audited the account of the opp. party No. 3 College, but it was not audited since 1992. After the management was taken over by Govt. in 2004 correspondences were made to audit the accounts by Local Fund Audit of the Govt. They further averred that the University Grants Commission funds were misutilized/misappropriated bypassing the Governing Body resolution. Due

to negligence of opp. party No. 4, in not depositing the E.P.F. dues in time, more than one lakh rupees was paid as penalty from the college fund under Annexure-H/3. So, he ought not have been made the President of the +3 College in question.

6. As per the counter affidavit filed on behalf of opp. party No. 2, Govt. has power to nominate president of the Governing bodies of private aided junior colleges and degree colleges, including a trust-managed private aided College. As per the amended rules 2001 there is no compulsion on the part of the Govt. to allow trust to have its president and Secretary of the Governing Body of a college, established by it. Since opp. party No. 4 worked as the president of the college for two terms, Govt. issued the notification, nominating the Sub-Collector as the president of the college in question. Grant-in-aid is being paid to the College and not to the trust and as such the Govt. has rightly issued the notification nominating the Sub-Collector as President.

7. Opp. party No. 1, through its Joint Secretary Higher Education Department filed the counter affidavit stating that Government is competent to nominate any person interested in the field of education as President of the Governing Body of a non-Government aided College under Rule 25(1)(i) of Orissa Education (Establishment, Recognition and Management of Private Colleges) Rules, 1991 (in short, "the Rules, 1991") as amended in 2001 and accordingly, the President of the Governing Bodies of all the non-Government Aided Colleges, including Sri Satya Sai College for Women at Bhubaneswar were legally and validly nominated by the Government vide letter dated 01.09.2005, Annexure-4.

8. Chronology of events not disputed by the parties is that as per Notification, Annexure-2 dated 10.06.2004, Governing Bodies of non-Government Aided Colleges were dissolved with immediate effect and Addl. District Magistrates in the District Headquarters and the Sub-Collectors within their respective Sub-divisions took over charge as the Presidents of the Governing Bodies. On 24.07.2004, the Sub-Collector, Bhubaneswar assumed the charge as President and issued direction as in Annexure-3. On 01.09.2005, Annexure-4 was issued by the State nominating Presidents for the 80 aided colleges and the serial No. 80 in that list is that of Shri Satyasai Women's College, Bhubaneswar and opposite party No. 4 was nominated as the President.

9. Rule 25 of the 1991 Rules after its amendment in 2001, reads as follows:

25(1) Notwithstanding anything contained in these rules as soon as the college becomes an aided college, the Governing Body of the college shall be reconstituted in the following manner:

(i) "a person interested in the field of education who may be nominated by the Government or, in the absence of such nomination, the Collector/Additional District Magistrate/Sub-Collector of the concerned district/Subdivision in which the College is situated shall be the President;

- (ii) the Principal or the teacher-in-charge of the Principal of the College shall be a member, who shall be the ex-officio Secretary.
- (iii) two senior most teachers of the college shall be members, of whom, one shall be a woman and on the event no woman member is available, the membership shall remain vacant till a woman teacher is posted;
- (iv) one member shall be elected by and from among the non-teaching staff;
- (v) local Member of Legislative Assembly or his/her nominee shall be a member;
- (vi) the Chairman/chairperson of Panchayat Samiti/Urban Local Body having the local jurisdiction over the College, as the case may be shall be a member;
- (vii) one person shall be nominated by the local Member of Parliament as member;
- (viii) one person shall be nominated by the Vice-Chancellor of the University having jurisdiction, who shall be a woman;
- (ix) one person shall be nominated as member by the Director, Higher Education, who shall be a woman;
- (x) five persons shall be nominated by the President referred to in Clause (i) shall be members, of whom, one shall be Donor who donates more than fifty thousand rupees or in absence of a Donor a person having interest in field of education, one person shall be belonging to the Scheduled Castes or Scheduled Tribes community, one person shall be belonging to the minority community and two shall be women.

10. There is no provision under Rule 25 as amended that in case of a college established and managed by a trust, Govt. must appoint the nominee of the trust as the president of the Governing Body. As found from the impugned order, Annexure-4, Governing bodies of the colleges mentioned therein were dissolved by exercising the power contained under Sub-section 6 of Section 7 of the Education Act, 1969 (in short the Act). The said provision reads as follows:

(6) The prescribed Authority may allow the Governing Body or the Managing Committee, as the case may be, whose term has expired under Sub-section (4) or Sub-section (2) of Section 7-A to continue in office till the Governing Body or the Managing Committee Is reconstituted or appoint any person or persons to exercise the powers and discharge the functions of the Governing Body or the Managing Committee during the intervening period.

Sub-section 4 of Section 7 of the said Act lays down that:

(4) A Managing committee or the Governing Body, as the case may be, shall continue in Office for a term of three years from the date of its approval by the prescribed authority under Sub-section (2) and shall be reconstituted in accordance with rules; Sub-section 2 of Section 7A of the said Act reads as follows:

7-A. Supersession and re-constitution of Managing Committee or Governing Body--

(1) xx xx xx

(2) As soon as possible after supersession of a Managing Committee or Governing Body, as the case may be, the prescribed Authority shall re-constitute the Managing Committee or the Governing Body, as the case may be, and the Managing Committee or the Governing Body so reconstituted shall, subject to the provision in Sub-section (1) continue for a term of three years from the date of such re-constitution.

11. A fascicle reading of all these provisions show that the Governing Body of a college shall continue in office for a term of three years from the date of its approval by the prescribed authority. However, it can be superseded before completion of its term of three years, if it is found that it has neglected or failed to perform any of the duties imposed on it. In either of the case, the prescribed authority may allow the Governing Body to continue in office till the new Governing Body is reconstituted or appoint any person or persons to exercise the powers and discharge the function of the Governing Body during the intervening period. In the present case, there is no material to show as to why the Governing Body of petitioner No. 3 College was dissolved. But Annexure-2, under which the Governing body of petitioner No. 3 College was dissolved, has not been challenged in this writ petition. Petitioners are aggrieved only with the notification, Annexure-4, so far Opp. party No. 3, College is concerned. This notification shows that Opp. party No. 4 was nominated as the President of the Governing Body of Opp. party No. 3 College. Once the Governing Body was dissolved, there exists no Governing Body for which a President can be nominated. It appears that there was total non-application of mind by the Government, more particularly, opp. parties 1 and 2 to understand and follow the provision of law in the Rules, 1991. It is so, because Rule 25 of the Rules, 1991, which is the relevant provision in Sub-rule 1 prescribes that "xxx as soon as the college becomes an aided college, the Governing Body of the College shall be reconstituted in the following manner.." (underlined to put emphasis). When the Governing Body was dissolved on 10.06.2004 and a new Governing Body was not in existence, the order of the State by nominating only a person as the President was improper and uncalled for. Therefore, the act of nominating opposite party No. 4 as the President under Annexure-4 is a half-done job and as such Annexure-4, so far Opp. party No. 3, College is concerned cannot be sustained and accordingly we quash the same. Consequentially, until reconstitution of the Governing Body in accordance with Rule 25 of the Rules, 1991, management of the College be entrusted to a competent authority under that Rules and steps be taken for reconstituting the Governing Body. So far allegations and the counter allegations relating to misutilisation of funds by Opp. party No. 4, non-auditing of the funds etc. are concerned, we refrain from going to those factual controversy. Nonetheless, it is the duty of the opp. parties 1 and 2 to see that for the entire

un-audited period, there is proper audit by the Local Fund Authorities and any person responsible for mismanagement or otherwise of the Government funds or the funds available from the U.G.C. may be dealt with suitably in accordance with the law. Such steps be taken expeditiously by the officer, who shall remain in charge of the College. In any case the Opposite party No. 2 shall see to the proper implementation of the above direction.

12. Accordingly, the writ petition is allowed and Annexure-4, so far it relates to petitioner No. 3 College is quashed.

P.K. Tripathy, J.

13. I agree.