

(1991) 04 OHC CK 0030
In the Orissa High Court
Case No : O.J.C. No. 1035 of 1991

Subesh Chandra Sasual and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-04-1991

Acts Referred:

Orissa Education (Management of Private Schools) Rules, 1980 — Rule 3(3), 4(1), 4(2)
Orissa Education Act, 1969 — Section 7

Citation : AIR 1992 Ori 25 : (1991) 2 OLR 187

Hon'ble Judges : S.C. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : J.K. Rath, M.M. Senapati and P.C. Pradhan, for the Appellant; P.K. Mohanty, Additional Government Advocate, for the Respondent

Judgement

S.C. Mohapatra, J.—This is an application invoking extraordinary jurisdiction of the Court under Articles 226 of the Constitution for direction to constitute a Managing Committee of an Aided High School.

2. Pancha Panchava Sailabala High School, Dhanisho is an Aided Educational Institution under the Orissa Education Act, 1969 (hereinafter referred to as "the Act"). As provided in Section 7 it has a Managing Committee, constituted under the Orissa Education (Management of Private Schools) Rules, 1980 (hereinafter referred to as "the Rules"). Such Managing Committee constituted by order of the Inspector on 30th December 1985 as per Annexure 1 in exercise of power under Rule 4(3) of the Rules. Term of the members of the Committee and the Committee itself was three years as provided in Rule 3(6) and Rule 6(1) of the Rules. Thus, being duly constituted on 30-12-1985, term of the members and the Managing Committee was to expire on 30-12-1988. Under Rule 4(1) of the rules, Managing Committee in office nominated petitioners as the seven members for reconstitution of the successor committee in its resolution dated 1-9-85 and Secretary of the Managing Committee moved the Inspector on 4-9-1985 for approval with the resolution of the Committee duly passed since it

is provided in Rule 4(1) that Secretary is to move not less than ninety days before expiry of the term of the committee in office. Inspector is required to pass an order within one month of the receipt of the proposal either according approval of the proposal or returning the same to the Secretary for substitution of any nominated member with reasons therefor. Since Inspector remained inaction for one month after receipt of the proposal from Secretary as per the decision reported in Srinath Nayak Vs. Circle Inspector of Schools and Another, such nomination by Managing Committee is deemed to have been approved as provided in Rule 4(2). Inspector is next required to exercise power under Rule 4(3) of the rules to nominate the other members of the Managing Committee and issue order of approval of the Managing Committee reconstituted with eleven members as provided in Rule 3(3), petitioners have approached this Court since Inspector has not exercised power under Rule 4(3) and they have been deprived of the office which they would have held. In the meantime Managing Committee constituted on 30-12-1985 not having been reconstituted before 30-12-1988, it was deemed to continue in office for six months as provided in Rule 6(2) first Proviso till 30-5-1989 after which the power and function of Managing Committee has vested in the Inspector though fatually the Managing Committee is discharging the function.

3. There might have been no difficulty to give direction to Inspector to exercise power under Rule 4(3) of the Rules if petitioners would have approached this Court before 30-5-1989. It is to be considered whether a direction to constitute a Managing Committee in exercise of power under Rule 4(3), with petitioners as members can be given at this stage.

4. A Managing Committee which has ceased to function under Rule 6(2) first proviso is a defunct Managing Committee as defined in Rule 2(c). This has been clarified in the decision reported in Managing Committee of Jugal Kishore High School Vs. State of Orissa and Others, represented by the Secretary to the Government of Orissa, Department of Education and others). Under Rule 9-A powers and functions of a defunct Managing Committee are exercised by the Inspector in respect of High Schools. Rule 6(2) first proviso only clarifies that position. Therefore, despite the fact that the Managing Committee which has statutorily ceased to function, exercising the powers, in law Inspector of Schools is to exercise the power.

5. Under Rule 3(3)(d) seven members are to be nominated by Managing Committee. When Managing Committee is superseded or suspended u/s 11, the authority kept in charge of management by the Director is to nominate the seven members. When Managing Committee is defunct Inspector is to nominate the seven members. This is provided in Rule 3(3)(d) proviso.

6. Normally, the Inspector is to function from the stage where the Managing Committee left the functioning at the time it became defunct. There is no difficulty where Managing Committee has not nominated the seven members when it became defunct. In Managing Committee of Jugal Kishore High School

Vs. State of Orissa and Others, it has been clarified that Inspector is to nominate the seven members. Rule making authority have made it clear that there should be another authority to examine the names nominated and approve them. When outgoing Managing Committee nominates, Inspector approves. When Inspector nominates in case of defunct Managing Committee. Director approves the same. When authority kept in charge in case of supersession nominates Director approves the same. Difficulty really arises when Managing Committee becomes defunct or is superseded after nomination of the seven members not less than ninety days before expiry of its term. There is no provision that a Managing Committee shall not become defunct or cannot be superseded if only three months are left for its expiry. In such cases, question would be whether the Inspector would proceed from the stage the defunct committee left the function of reconstitution or it shall start denovo.

7. When Rule 3(3)(d) third proviso clearly provides without any exception that Inspector who exercises power of Managing Committee is to nominate the seven members, there is no scope to read in to the provision the term "except where the Managing Committee before becoming defunct has nominated the seven members". That would amount to reading something in the statute which the rule making authority did not provide. Rule making authority was aware that a Managing Committee may be superseded or became defunct even on the last day of its functioning. Provision in that respect is wide. Accordingly, I am inclined to hold that actions taken under Rule 4(1) or Rule 4(2) or deemed to have been taken under Rule 4(2) on account of efflux of time as held by this Court in Srinath Nayak Vs. Circle Inspector of Schools and Another, would not control power of the Inspector to nominate seven members as provided under Rule 3(3) (d) third proviso of the Rules.

8. On this interpretation, a serious question arises for consideration. If an Inspector deliberately does not pass an order under Rule 4(3) and allows the Managing Committee to cease to function after 3 years 6 months, whether he should be permitted to take advantage to nominate seven persons? Rule 3(3) Third Proviso being clear and not controlled by any other situation, it is to operate on its own force. To avoid Rule 3(3) Third Proviso to operate as a result of Rule 6(3) First Proviso and Rule 9-A, persons interested can approach this Court as has been observed in Gaurahari Dash and Another Vs. Inspector of Schools, Mayurbhanj Education and Others, as follows :

"..... .To avoid such a situation inaction of the Inspector could have been assailed in this Court before expiry of the extended term of the outgoing Managing Committee. Operation of the statutory provision could have been arrested by this Court by interim order."

Once Rule 3(3) operates, incomplete actions under Rule 4 shall be wiped out. There is no escape from this conclusion.

9. This Court has seriously viewed inaction of Inspector in Srinath Nayak Vs.

Circle Inspector of Schools and Another, which view has also been accepted in a later Division Bench decision reported in 68 (1989) CLT 47 : (1989) 2 OLR 246 (Justice Kunja Behari Panda v. State of Orissa). Thus, inaction of persons and authorities connected with educational institution ought not to be tolerated and no premium to such inaction ought to be given. If the outgoing Managing Committee or even the petitioners would have approached this Court before 30-5-1989, there would have been no difficulty in directing the Inspector to exercise power under Rule 4(3) within a time to be stipulated. Inaction of Inspector and silence of petitioners have allowed the Statute to operate and power and functions of Managing Committee has vested in the Inspector under Rule 6(3) Second Proviso read with Rule 9-A. Automatically, Rule 3(3)(d) third proviso operates and it cannot be arrested or retarded back.

10. In conclusion, nomination of petitioners under Rule 4(1) though deemed to have been approved under Rule 4(2) on account of inaction of Inspector ceased to have effect from 30-5-1989 when exercise of powers of Managing Committee vested in the Inspection. No direction can be given to Inspector to exercise power under Rule 4(3) with petitioners as the approved nominated members.

11. In spite of the aforesaid conclusion, we make it clear that statutory intention is that a private High School is to be managed by a Managing Committee normally. In exceptional circumstances, such power of management is vested in others. Exceptional circumstances should not continue for long. As soon as possible steps are to be taken to constitute Managing Committee. In this case Inspector should take over the management immediately and nominate seven names and send the same to the Director. There is no prohibition on part of Inspector to consider the names of petitioners individually for being nominated taking into consideration their eligibility and aptitude for development of the educational institution. We make it clear that Inspector should have an objective approach. Director should immediately consider the question of approval of the names nominated by Inspector. On receipt of the approval, Inspector is to nominate the two persons as provided in Rule 3(3)(c) and adding the ex-officio members pass order under Rule 4(3) constituting the Managing Committee. Entire process should be completed by end of December, 1991.

12. Subject to aforesaid observations, this application is dismissed. No costs.