

(1976) 12 PAT CK 0015
In the Patna High Court
Case No : C.P.A. No. 6 of 1976

The Managing Committee, High School and Another	APPELLANT
Vs	
Sheo Nandan Sinha "Vikas" and Others	RESPONDENT

Date of Decision : 21-12-1976

Acts Referred:

COMPANIES ACT, 1956 — Section 253, 254, 255, 256, 261
Constitution of India, 1950 — Article 12, 226, 227, 311

Citation : (1977) 25 BLJR 195 : (1977) 10 PLJR 425

Hon'ble Judges : Shambhu Prasad Singh, J; S.K. Jha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Jha. J.

1. This is an appeal under Clause 10 of the Letters Patent arising from the judgment of a learned single Judge of this Court dated the 3rd of February, 1976 C.W.J.C. No. 693 of 1974. In that application under Articles 226 and 227 of the Constitution of India, respondent No. 1 Shri Sheonandan Sinha "Vikas" was the petitioner whereas the two appellants here were respondents 3 and 4 respectively. Respondents 2, 3, 4 and 5 to this appeal were respondents 1, 2, 5 and 6 respectively in the aforesaid writ application. Originally a number of prayers had been made in that application, but ultimately the application was confined to the issuance of a writ for quashing annexure 4 to the writ application. By the impugned judgment, that annexure which is the resolution of the managing committee of the High School, Jamui, Monghyr (hereinafter to be referred to as the school), appellant No. I, dated the 8th of May, 1973 was quashed. By that resolution, the managing committee had resolved that, in view of the State Government's decision to abolish the system of higher secondary education in schools, the posts of the Principal and the Vice-Principal were also being abolished and the positions as was obtaining before the coming into vogue of the system of higher secondary education was to continue thenceforth. The

practical effect of that resolution was that appellant No. 2 Shri Nand Kishore Prasad, who was, prior to the introduction of the aforesaid scheme or system of education, the Assistant Headmaster of the school while the school was a mere secondary school, was permitted to act as the Headmaster of the School whereas respondent No. 1, who was the writ petitioner and who had been acting as the Vice-Principal of the school during the continuance of higher secondary education system was reverted to his original post of an Assistant Teacher.

2. There is not much controversy with regard to the facts obtaining in this case. The points of law, which have been raised in support of this appeal, are short but one of the points is not free from difficulty. Mr. B.G. Ghose, learned Counsel for the appellants raised two points in support of this appeal. The first and the most vital point that was raised is as to whether a writ could issue to the managing committee of the school or not. Although the fact as to whether the school in question was an absolutely private school or a Government-aided school is not clear from the records of the case, learned Counsel for the appellants proceeded upon the assumption that the school was an aided school, it was contended that the managing committee of the school was neither the creature of any statute nor under it but was merely governed by some statutory provisions in discharge of its functions, in other words, the submission was that the managing committee not being a statutory body, this Court had no jurisdiction to issue a writ in exercise of its power under Articles 226 and 227 of the Constitution of India. The other point that was canvassed at the Bar was that, since the scheme of education known as higher secondary education in the school was itself abolished, the posts of Principal and Vice-Principal should automatically be deemed to have been abolished and with the abolition of these posts, there could not be said to be any legal right vested in respondent No. 1, who was the writ petitioner, to claim to continue on the post of Vice-Principal or to his promotion as the Principal or the Headmaster as a matter of legal right. It was contended that, since there was a cessation of the post, there was a cessation of work, and that being so, there could not be said to have been any infirmity in the Impugned resolution of the managing committee.

3. I propose to dispose of the second point raised by Mr. Ghose first. Reliance was placed by Mr. Ghose on the decisions of the Supreme Court in *M. Ramanatha Pillai Vs. The State of Kerala and Another*, and *State of Haryana Vs. Shri Des Raj Sangar and Another*, . The principle established by these decisions is that the power to create, continue and abolish any civil post is inherent in every sovereign Government. It is a policy decision exercised by the executive and is dependent on the exigencies of circumstances and administrative necessity. The abolition of a post may have the consequence of termination of service but such termination is neither dismissal nor removal within the meaning of Article 311 of the Constitution. The abolition of a post is not a personal penalty imposed on any Government servant. As long as the decision of the Government regarding the abolition of a post is taken in good faith, the same is not questionable in a court, for it is not open to the court to go behind the wisdom of the decision and

substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. These decisions can be of no avail to the appellants on the facts and in the circumstances of the instant case. In this connection annexure 3 to the writ application must be noticed as it was relied upon by learned Counsel for both the parties. Annexure 3 is a memo of the State Government issued by the Director of Public Instruction to all the school authorities throughout the State. The memo is dated the 10th of November, 1971. It was conveyed through that memo that, in view of the Government Resolution No. 1188 dated the 27th of March, 1971, the scheme of higher secondary education had been abolished and the State administration had taken a decision that all such higher secondary and multipurpose schools should be treated as mere high schools and that in future the appointments of teachers and other personnel in the schools should be made in accordance with the pattern of high schools on the approved pay scale for such posts. It was, however, further communicated that the teaching staff appointed in higher secondary and multipurpose schools, whose appointments had been approved by the competent authority, shall not, in any way, be prejudicially affected either by termination of their service or by changing their pay scale and status, Mr. Ghose for the appellants contended that this was merely an executive or administrative instruction having no binding force and that, therefore, the abolition of the system of higher secondary or multipurpose schools amounted to an automatic cessation of work of the Principals and Vice-Principals appointed during the period that such system of education was in vogue. This argument, to my mind, is fallacious. Such instructions issued by the Director of Public Instruction were in conformity with the Rules framed by the State Government under the rule-making power vested in it Section 8 of the Bihar High Schools (Control and Regulation of Administration Act, 1960 (hereinafter to be referred to as the Act). And, such rules relevant for the present purpose were framed being termed the Bihar High School "Service Condition" "Rules", 1972 (hereinafter to be referred to as the Service Condition Rules). The instructions or circular issued (Annexure 3) are in consonance with Rule 12 of the Service Condition Rules, the English version of which (translation rendered by me) runs thus.

Any post of any teacher in a school shall not be abolished nor a post abolished can be re-created or revived without the prior approval of the competent authority. In any case, the competent authority shall inform the Board with regard to the ultimate decision taken in this behalf-either in relation to abolition of a post or for re-creating an abolished post.

And, a "teacher" has been defined in Rule 2(xxxiii) as including an assistant teacher, an assistant headmaster and a headmaster. Rule 2(vii) defines a "headmaster" as including a principal or any person duly appointed by the competent authority in any school in that behalf while Rule 2(ii) defines an assistant headmaster as including a vice-principal. It was not debated at the Bar that the Service condition Rules aforesaid have the force of law having been duly framed by the State Government under its rule making power u/s 8 of the Act. In

that view of the matter, learned Counsel for the appellants in his submission become a little lukewarm in so far as this second point is concerned, For the reasons aforesaid and for the cogent reasons given by the teamed single Judge in this regard. I do not find any substance in this contention of Mr. Ghose. This contention must, therefore, be repelled.

4. Apropos the first point raised by Mr. Ghose, as I have indicated earlier, although the point *prima facie* seems to be not free from difficulty, after due deliberation and on a careful consideration of the matter, I think the decisions of the Supreme Court cited at the Bar are in no way contrary to each other nor irreconcilable. Before referring to the various cases cited by learned Counsel for either party, it is worthwhile to take notes of the decision on this point of the learned single Judge and the case law in support of his finding, and in that connection it will also be noteworthy to first take notice of certain decisions which have been sought to be distinguished in the impugned judgment. The point was raised by learned Counsel for the appellants before the learned single Judge by way of a preliminary objection to the effect that a writ cannot issue against the managing committee of the school, appellant No. 1, it being not a statutory or public body or public authority. Before the learned single Judge reliance had been placed in support of this proposition on the decision of the Supreme Court in the case of *Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College*, and that of *Subh Narain Sinha. v. Hari Singh Havalkha* 79 C.W.N. 672 The learned single judge, while distinguishing these two decisions, relied upon a number of decisions for coming to the conclusion that

The Managing committee thus undoubtedly is a public body bound by certain rules having the "force of law and a writ can, therefore, undoubtedly issue against the Managing Committee.

The decisions which have been pressed into service for coming to such a conclusion are those of the Supreme Court in the case of *Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, and a Full Bench decision of the Allahabad High Court in the case of *Vaish College Society Shamli v. Lakshmi Narain* AIR 1974 All 1 and that of a Full Bench of Andhra Pradesh High Court in the case of *Harijander Singh Vs. Selection Committee, Kakatiya Medical College, Warrangal and Another*, and 2 unreported decisions of this Court, one such unreported decision being that of a Division Bench in the case of *Sri Ram Narayan Ojha v. Shri Madhusudan Chaturvedi* 1962 M.J.C. 115 decided on 9.10.64 and the other being of the learned single Judge himself in the case of *Baleshwar Prasad Singh v. State of Bihar* 1973 C.W.J.C. 115 decided on 15. 5. 73. In my view, for the reason hereinafter given the decisions relied upon by the learned single Judge, which were also vehemently relied upon by learned Counsel for the respondents before us, cannot come to the aid of the respondents. So far as P.R. Jodh's case (*supra*) is concerned, the facts of that case were that the appellant before the Supreme Court was a teacher in a college affiliated to the University of Saugar and

managed by the governing body established under Clause 3 of the "College Code which was an Ordinance made under the provisions of the University of Saugar Act. The Principal of the college served upon the appellant a charge-sheet and asked to him to submit his explanation. The charges were denied and request was made for particulars on which the charge were based to be furnished. This request, as it was alleged, was turned down by the governing body which terminated his services allegedly without holding any enquiry. The High Court was moved for an appropriate writ quashing the order of the governing body and for Jodh's reinstatement. The case of P.R, Jodh was that the governing body has passed the order of discharge in violation of the provisions of the College Code. The High Court rejected that contention of Jodh on the ground that the conditions of his service were governed not by the College Code but by the contract made between the governing body and himself. The High Court also took the view that provisions of the College Code were merely conditions prescribed for affiliation of colleges and no legal rights were created by the College Code in favour of the teachers of the affiliated colleges as against the governing body. When the matter went up to the Supreme Court. The Supreme Court observed at page 715 of the Reports

The High Court rejected the contention of the appellant on the ground that the conditions of service of the appellant were governed not by the "College Code" but by the contract made between the Governing Body and the appellant. The High Court also took the view that provisions of the "College Code" were merely conditions prescribed for affiliation of colleges and no legal rights were created by the "College Code" in favour of lecturers of the affiliated colleges as against the Governing Body.

The main question which presented itself for consideration before the Supreme Court was whether the High Court was right in taking the view that the "College Code" merely prescribed conditions for affiliation of colleges and no legal rights were created by the "College Code" with regard to teachers of affiliated colleges, it has to be borne in mind, as Ramaswami, J., speaking for the court and himself, put it at page 715 that that was the sole point for consideration before the Supreme Court. While dealing with that point, at page 718 it was held

It is not disputed on behalf of the respondents that the "College Code" has been made by the University in exercise of statutory power conferred by Section 32 and u/s 6(6) of the Act. It is also conceded on behalf of the respondents that the "College Code" is intra vires of the powers of the University contained in Section 32 read with Section 6(6) of the Act. In our opinion, the provisions, of Ordinance 20, otherwise called the "College Code" have the force of law. It confers legal rights on the teachers of the affiliated colleges and it is not a correct proposition to say that the "College Code" merely regulates the legal relationship between the affiliated colleges and the University alone. We do not agree with the High Court that the provisions of the "College Code" constitute power of management. On the contrary we are of the view that the provisions, of the "College Code"

relating to pay scale of teachers and their security of tenure properly fall within the statutory power of affiliation granted to the University under the Act. On the other hand, we are of opinion that the provisions, of Clause 8 of the Ordinance relating to security of the tenure of teachers are part and parcel of the teacher's service conditions and, as we have already pointed out, the provisions of the "College Code" in this regard are validly made by the University in exercise of the statutory power and have, therefore, the force and effect of law. It follows, therefore, that the "College Code" creates legal rights in favour of teachers of affiliated colleges and the view taken by the High Court is erroneous.

This, in my opinion, is the entire ratio decidendi of P.R. Jodh's case. As a matter of fact, as may be noticed from page 719 of the Reports, it had been contended before the Supreme Court on behalf of the respondents that the governing body of the college was not a statutory body performing the public duties and no writ in the nature of mandamus could, therefore, be issued to the governing body of the college. It was conceded, however, that such an objection had not been pressed before the High Court and in that view of the matter the Supreme Court expressed its inability to entertain the preliminary objection at that stage and overruled the same on that ground alone. As a matter of fact, the distinguishing features of P.R. Jodh's case have been clearly and succinctly. If I may say so with great respect, pointed out by the Supreme Court in its decision in the case reported in Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, . The learned single Judge has tried to distinguish the case of Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, . But, to my mind, the points of distinction pointed out and, if I may say so with respect are erroneous and fallacious. In Vidya Ram Mishra's case, when the decision of the Supreme Court in Jodh's case was pressed into service, Mathew, J., speaking for the court, pointed out in paragraphs 12 and 13

Whereas in the case of Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, the terms and conditions of service embodied in Clause 8(vi)(a) of the "College Code" had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract.

And, apart from this

Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegaiiy, as stated in S.R. Tewari Vs. District Board Agra and Another, . (12) might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The college, or the Managing committee in question, is not a statutory body....

It was argued in the case of Vidya Ram by Mr. Setalvad that is should be held

that the Supreme Court has sub-silentio sanctioned the issue of a writ under Article 226 to quash an order terminating services of a teacher passed by a college similarly situate in P.R. Jodh's case. Such a contention was categorically repelled and it was pointed out that the Supreme Court had expressly stated in the judgment in Jodh's case that no such contention having been raised in the High Court it could not be allowed to be raised in the Supreme Court.

5. The next case relied upon by the learned single Judge is that of Sirsi Municipality (*supra*). In that case, an order of dismissal by the municipality without reasonable opportunity for defence hearing was challenge by the dismissed employee. While contesting the proposition that a writ could issue against the municipal authority as it was in violation both of the statutory provisions as also of the principal of audi alteram partem, it was argued that the case fell within the third category of cases out of the three exceptions mentioned in Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kirm Tyagi (13). It was argued that termination or dismissal of what is described as pure contract of master and servant could not be declared to be a nullity however wrongful or illegal it might be. While repelling such contention, the Supreme Court held in paragraph 19

The courts keep the State and the public authorities within the limits of their statutory powers. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements or on grounds which are not sanctioned or supported by statute the courts may exercise jurisdiction to declare the act of dismissal to be a nullity. Such implication of public employment is thus distinguished from private employment in pure cases of master and servant.

It will be seen from the facts of the Sirsi Municipality case that the municipality in question against which a writ was prayed for and ordered to be issued was governed by the Bombay District Municipalities Act, 1901 and Section 46 of the Act provided that the municipality shall make rules in respect of matters enumerated in that Section and Clause (g) of Section 46 of that Act empowered the municipality to frame rules regulating, inter alia, the period of service, the conditions of service, etc. and relevant rules in that Denali were framed by the subordinate legislation making authority. The municipal council was, in such circumstances, held to be certainly a public authority which was bound to be governed in exercise of its statutory powers by the limits set forth in the relevant statutory provisions and the rules which had the force of law. It was not a case of termination or dismissal of what is usually described as a pure contract of master and servant. The facts of the Sirsi Municipality case bear definite distinguishing features which cannot make that authority available in support of the case of the respondents here. The learned single Judge, and, I say so with respect, has rightly observed that

It is upon the facts of each case and the statutes which are relevant that one has to decide as to whether or not the body is statutory and the law which creates or

governs it is of statutory character.

In so far as the Full Bench decision of the Allahabad High Court reported in AIR 1974 All 1 (supra) is concerned, on which strong reliance has been placed by the learned single Judge, suffice it to say that this case has been expressly reversed and the principle enunciated therein overruled by the Supreme Court in *Executive Committee of Vaish Degree College Shamli v. Lakshmi Narain* (14). I think it is meet and proper in the circumstances to deal with this decision of the Supreme Court. It has been held in that case by S.M. Fazl Ali, J., speaking for self and on behalf of Khanna, J., that before an institution can be called a statutory body, it must be created by or under a statute and owe its existence to a statute this must be the primary thing which has got to be established. A distinction must be made in the matter of an institution which is not created by or under a statute but is governed by certain statutory provisions for proper maintenance and administration of the institution. There have been a number of institutions, which, though not created by or under any statute, are obliged to adopt certain statutory provisions but that by itself is not sufficient to clothe such an institution with a statutory character. As has been said by the Supreme Court in *Vaish Degree College* case, the crux of the matter is to pose a question as to whether, if there were no statute, would the institution have any legal existence? If the answer be in the negative, then it is a statutory body. If, however, an institution has a separate existence of its own without any reference to the statute, concerned, but is merely governed by the statutory provisions, it cannot be said to be a statutory body. The entire case law on the subject has been reviewed by the Supreme Court in this case. On such a review, it was held that the executive committee of a degree college which was affiliated to the Agra University and subsequently to the Meerut University was not a statutory body merely because it was affiliated to the University or was regulated by the provisions of the University Act or the statutes made there under. The fact that the degree college was registered under the Registration of Co-operative Societies Act, although a distinguishing feature of that case, had no bearing on the ratio of the decision. For it was held that by co-opting the principal of the college as a representative of teachers as one of the members of the managing committee it did not lose its independent statutes but continued to remain as non-statutory and autonomous body. In cases of such non-statutory body, it was not debated at the Bar nor could it have been so debated as the principle is well established by numerous decisions both of the Supreme Court as also of the House of Lords in England and that well-settled principle is that a contract of a personal service cannot ordinarily be specifically enforced and a court would not give a declaration that the contract subsists and the employee, even after having been removed, can be deemed to be in service against the will and consent of the master. This rule has again 3 well-recognised exceptions. One is where a public servant is sought to be removed in contravention of the provisions of Article 311 of the Constitution, the second exception is where a worker is sought to be reinstated under the law of Industrial adjudication and the third is where a

statutory body acts in breach or violation of the mandatory provisions of a statute. We are not concerned with the first two exceptions mentioned above. All that has to be seen in the instant case is as to whether the managing Committee of the school in question can be said to fall under the third exception. Tests have been laid down by a catena of decisions of the Supreme Court and various High Courts to examine whether a body is a statutory body and whether it has acted in violation of the statutory provisions or not. I assume for the sake of argument that some mandatory in statutory provisions may have been violated but that again, in my view, will not be sufficient to attract the third exception. For, before going into the question with regard to the breach or violation of any mandatory statutory provision, the first thing that has to be seen is as to whether such a kind of infraction of mandatory statutory provisions has been purported to be made by a body which can be termed a statutory body. In other words, unless the managing committee of the school in the instant case can be said to be a creature of some statute or created by or under any such statute, no writ can issue against it. It is needless to multiply the decisions in this regard and it was, perhaps, if I may venture to say so, on that account that the Supreme Court in the case of *Arya Vidya Sabha, Kashi v. Krishan Kumar Srtvastava* (15) did not embark upon any exploration as to the well established principles to be applied in such cases and relying upon its own decision in *Vaish Degree College case* (supra) it was held that *Dayanand Mahavidyalay Degree College, Varanasi*, which was an institution affiliated to the Banares Hindu University was not a creature of statute but had entity like a company or a co-operative society or other body which has been created under the operation of a statute. The point which I want to highlight is this. There is a distinct connotation of a statutory body in contra-distinction to a body which has been created under the operation of a statute. A managing Committee of a school, assuming for the sake of argument, having been created under the operation of a statute, although not by the statute or under the provisions of statute itself, shall not be amenable to the issuance of a writ under the provisions of Article 226 of the Constitution. Before I refer to the two unreported decisions of this Court one of the Division Bench and another of the learned Single Judge himself I may point out the salient features of the case in *Harijander Singh Vs. Selection Committee, Kakatiya Medical College, Warrangal and Another*, . In that case, the Full Bench of that court held that the ambit of certiorari can be said to govern even cases in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting the subjects provided, always, that it has a duty to act judicially. In that case it was also held in paragraphs 85 and 86 that even if a college was not a statutory body, in an appropriate case a writ of certiorari can go against a private college. It was further held that the rules of affiliation even if taken to be non-statutory but mere administrative instructions issued by the University or the grant-in-aid code by the Government, they would not come in the way of issuance of such a writ. A writ, it was held, can issue against a non-statutory body even if it violates administrative or executive directions or instructions or acts in violation of principle of natural justice. I beg to differ from

the view taken by the Full Bench of the Andhra Pradesh High Court with regard to the latter part of the judgment, the principle of which has been extracted above, without going into any further discussion of the case law on the subject, it is sufficient to say the least that in view of the latest decisions of the Supreme Court in the Vaish Degree College case and the case of Arya Vidya Sabha, the aforesaid decision of the Andhra Pradesh High Court does not seem, in my view, to lay down the correct law.

6. Since the two unreported decisions of this Court referred to above are with regard to managing committees or governing bodies judged in the light of provisions of the Act and the Bihar High Schools (Constitution, Powers and Functions of Managing Committee) Rules, 1964 duly framed by the competent rule-making authority under the powers vested by Section 8 of the Act, it is worthwhile to refer to the provisions which had fallen for consideration in those cases and were also placed before us. Learned Counsel for the respondents invited our attention to Sections 4, 5 and 8 of the Act and Rules 37, 38 and 39 of the rules. Before dealing with the aforesaid provisions of the Act and the Rules, I must state at the outset that it is not the case of either party that without the Act or the Rules as a matter of fact there would not have been managing committee of a proprietary or an aided school. That being the factual position, advertent to the aforesaid statutory provisions, it will be noticed that Section 4 of the Act merely lays down the functions of the Board of Secondary Education (shortly called the Board). That provision is of no significance here in so far as the point under consideration is concerned. Section 5 of the Act speaks about the managing committee, Sub-section (1) thereof says that for every High School there shall be a managing committee constituted in such manner as may be prescribed and Sub-section (2) of Section 5 lays down that if the Board is of the opinion that the managing committee of a school is not functioning in a way conducive to the maintenance of discipline among its teachers and pupils and is not carrying out the directions of the Board or administering the finances of such school properly, it may, by an order, after giving the managing committee a reasonable opportunity of being heard, suspend for a period not exceeding six months or dissolve the managing committee. The proviso excepts from the operation of the aforesaid statutory provision such High Schools as are administered by minority based on religion or language. Sub-section (5) of Section 5 enjoins that in case the Board suspends or dissolves the managing committee under Sub-section (2), the powers and duties of the managing committee shall be exercised and performed by such person or persons as may be appointed by the Board until the expiry of the period of suspension or the reconstitution of the managing committee, as the case may be. Sub-section (4) provides that where a managing committee is dissolved under the provisions of Sub-section (2), a new managing committee shall be constituted in accordance with the rules made in this behalf within one year of such dissolution. No other provision of the Act is relevant for the present purpose. As I have already indicated above, so far as Section 8 of the Act is concerned, it merely empowers

the State Government to make rules in accordance with which the 1964 Rules as well as the Service Condition Rules, 1972 mentioned at the outset have been framed. The main question that arises for consideration is that merely because Section 5(1) of the Act says that for every High School there shall be a managing committee and that such managing committee shall be constituted in the manner prescribed by the Rules, can it be said that the managing committee of every school is a statutory body, namely, that it is a creature of, or has been constituted under, the provisions of Section 5(1)? To my mind, the answer is clearly in the negative. It merely lays down the manner in which the managing committee is to be constituted, and I shall presently refer to the relevant provisions of the Rules which say that such managing committee shall act in accordance with such manners as are enjoined in the Rules themselves. The relevant rules may be scanned thus. Rule 3 occurring in Chapter III of the Rules speaks of the manner in which the managing committee of a school other than a proprietary school shall be constituted. Eight categories of members forming the managing committee have been laid down. As a matter of fact, the entire chapter III of the Rules deals with the constitution of the managing committee, of a school other than a proprietary school and, inter alia, lays down as to who can be hereditary members and life member, who can be teacher's representative to be appointed a member of the managing committee, what shall be their respective terms of membership, how the election of donors to be included in the managing committee has to take place how co-option of members shall be made, how the President and the Secretary of the managing committee of a school other than a sub-sidised and proprietary school shall be held, how the selection of the guardian's representatives shall be made, how the President, the Secretary or the members of the managing committee can be suspended or removed and what shall be quorum for the meeting for co-option of members and election of the President or the Secretary of the managing committee, etc. Similarly, Chapter IV of the Rules deals with different problems of allied nature in respect of constitution of managing committee of a proprietary school and chapter V lays down general provisions applicable to managing committee of school, be that a proprietary or a non-proprietary school. Chapter VI of the Rules lays down the powers and functions of a managing committee. Sub-rule (2) of Rule 31 deserves special notice in this regard. For, it lays down the matters in particular and without prejudice to the generality of the powers conferred on the managing committee under Sub-rule (1). It (managing committee) shall exercise such powers, inter alia, including the power to create with the approval of the Board teaching, administrative, ministerial and inferior posts and to make appointment thereto in accordance with the rules laid down in that regard, and Clause (xiv) of Rule 31(2) empowers the managing committee to appoint teaching and other staff in vacancies in the existing posts, to grant extension of service and to impose penalties on members of the staff in accordance with the rules laid down in that regard and Clause (iv) thereof further empowers the managing committee to exercise administrative and disciplinary control on the members of the teaching and other staff of the school subject only to the rules prescribed in that

regard. Clause (xviii) empowers the managing committee to enter into any agreement for and on behalf of the school. Chapter VII of the Rules which is not very relevant for the present purpose, deals with the authorities of the managing committee and their powers and functions, namely, the President the Secretary and the Headmaster, etc. Rules 38 and 39, to which our attention particularly invited, merely lay down that the managing committees functioning in schools on the date on which the 1964 Rules, as modified by the State Legislature, are published in the official gazette, shall cease to function after a period of two years from the date of publication of the said Rules and on the day a managing committee is constituted under these Rules. Rule 39 merely provides that where a managing committee is not constituted in accordance with Rules within a period of 2 years from the date of publication of the Rules as envisaged in Rule 37, the powers of the managing committee. President and the Secretary shall, until its constitution in accordance with the Rules is complete, may be exercised and performed by such persons as may be appointed by the President of the Board for the purpose. As I have already indicated earlier, so far as Section 5 of the Act is concerned, that by itself does not create the managing committee of a school. This view of mine is reinforced by, and, finds support from Rule 38 of the Rules itself. As I have already given the contents of Rule 38 above, it will be seen from them that the Act and the Rules contemplated that the managing committees were functioning in different schools of the State before the Rules came into force. All that Rule 38 emphasises is that such managing committee functioning in the schools on the date on which the 1964 Rules, as modified by the State Legislature, were published in the official gazette, shall cease to function. But after that what? The answer is provided in Rule 38 itself that if a managing committee is not constituted in accordance with the Rules, within a period of 2 years of the Rules or publication thereof then a managing committee has to be constituted under the Rules of 1964, that means, in accordance with and in the manner as prescribed in the Rules. Which managing committees, there fore, are created under the operation of a statute as distinct from by or under the statute itself. That makes the whole distinction. Both the Bench and the single Judge in the unreported decisions referred to above have merely proceeded upon the footing that even if the managing committee constituted in the manner as prescribed in the Rules were creatures not of the statute but were governed by the Rules under the statute or were constituted in the manner under the operation of the Rules having the force of law, they may yet be termed statutory bodies. With great respect, I think, in view of the two Supreme Court decisions in Vaishya Degree College and Arya Vidya Sabha cases, these decisions cannot be held to be any longer good law.

7. For the reasons stated above, I am constrained to take the view that the managing committee of the High School, Jamul, with which we are concerned, is not a statutory body in the sense that it is neither a creature of the statute nor has it been created under the provisions of the statute. The Act and the Rules together merely lay down the manner in which a managing committee can be

constituted; and the Rules certainly lay down the limits which such managing committee are not to transgress in order to invoke the penal clause for their being either suspended or dissolved by the Board. In my view, an analogy was rightly drawn by Mr. Ghose appearing for the appellants in this regard by referring to the provisions of Sections 253, 256 and 261 of the Companies Act, 1956. Section 253 of the Companies Act prescribes that only individuals can be directors and Section 254 thereof prescribes that in default of and subject to any regulations in the articles of a company, subscribers of the memorandum who are individuals, shall be deemed to be the directors of the company until the directors are duly appointed in accordance with Section 255 which lays down the mode of appointment of directors and the proportion of those who are to retire by rotation. Section 256 lays down the provisions with regard to the ascertainment of directors retiring by rotation and filling up of vacancies while Section 261 recognises the powers of the public company or its managing agent to appoint director to the Board. The provisions of the Companies Act like the provisions of the Act in question lays down that a company shall have a board of directors constituted in a particular manner and also provide for procedure in which the vacancy, as and when occurring either by rotation or otherwise, shall be filled up and it has never been held that a board of directors of a company, although formed and created under the operation of this statutory provisions, is a statutory body. On the contrary, the decision of the Supreme Court in the case of *Aryn Vidya Sabha. Kashi v. Krishna Kumar Srivastava* (15), referred to above, has expressly taken the view that such companies cannot be called statutory body at all.

8. For these reasons I find sufficient force in the first contention of Mr. Ghose that no writ of mandamus or certiorari can lie against the managing committee appellant No. 1, which is a body created neither by the statute nor under the provisions of the statute.

9. Before parting with the case, I must also take note of a few submissions made by Mr. Prabha Shanker Mishra, learned Counsel for the Board, Mr. Mishra submitted that even if it be held that the managing committee in question is not a statutory body, it should be held that it is covered by the term "State" within Article 12 of the Constitution. This argument is stated merely to be rejected. For, if the managing committee of a school is not a statutory body or a public authority, deriving its powers from statutory provisions, it will be too much to say that it can yet fall within the definition of State under Article 12. was yet another contention, technical in nature as it is raised by Mr. Mishra, namely, that the appellants in the present appeal had no locus standi to maintain this appeal. It was urged that the old managing committee, which had been made a party respondent to the writ application before the learned single Judge, ceased to function after the arguments in that case were over and before the judgment was delivered-near about 6 months later-and that a new managing committee under the law in force, namely, Bihar Secondary Education Board (Second) Ordinance, 1976 (Bihar Ordinance 124 of 1976) published in the Bihar Gazette

Extraordinary on the 22nd of April, 1976. came into existence. This question is of mere academic importance, for it cannot be denied nor, of course, was it argued seriously that appellant No. 2 had no locus standi to maintain this appeal. As a matter of fact both the appellants were aggrieved by the impugned judgment of the learned single Judge. Whatever may be the position with regard to the then managing committee which may since be said to have become defunct, there is no gainsaying the fact that appellant No. 2 has been prejudicially affected by the impugned judgment. That appellant No. 2 is a person aggrieved was not even half heartedly canvassed by Mr. Mishra. I thus find no merit in this technical objection on behalf of the respondents either. Learned Counsel in support of the technical objection relied on a decision of the Supreme Court in the case of *Jasbhai Motibhari Desai v. Roshan Kumar, Haji Bashir Ahmad* (16). especially on paragraph 38 thereof. AH that the Supreme Court decision above mentioned says is that a writ can lie only at the instance of a person concerned or aggrieved by the act which is complained of. In view of what I have said above, the application of that decision is not warranted.

10. Mr. Mishra also raised a contention that the position as it obtained under the 1960 Act or the 1964 Rules cannot be said to hold the field now in view of the two successive Ordinances duly passed in this behalf. One of the Ordinances I have already referred to, namely, Bihar Ordinance 124 of 1976. The other Ordinance which has succeeded the aforesaid Ordinance is the Bihar Secondary Education Board (Third) Ordinance, 1976 (Bihar Ordinance 169 of 1976). I make it clear that we have not been addressed in this case in relation to the provisions of the two Ordinances aforesaid and whatever has been said in the preceding paragraphs of this judgment cannot in any way said to be deciding matters relating to institutions as may be set up under the provisions of the aforesaid two Ordinances. Therefore, the apprehension of Mr. Mishra is without any foundation.

11. For the aforesaid reasons I am constrained to hold that this appeal must succeed and the order of the learned Single Judge must be set aside on the ground that no writ can issue against the managing committee and the writ application itself was not maintainable in this regard. On the facts and in the circumstances of this case, however, I shall make no order as to costs.

Shambhu Prasad Singh, J.

I agree and wish to make a few observations of my own. It is well settled by the decisions of the Supreme Court elaborately discussed in the judgment of my learned Brother delivered just now that in a case like the one under consideration before us a writ cannot issue to managing committee of a school or college unless it is a statutory body. A public or local body is not necessarily a statutory body. It can be statutory body only if it is created by or under a Statute. If the body is created under the operation of some provisions of the statute then it is not a statutory body, My Learned Brother has referred to the relevant provisions of the Bihar High Schools (Control and Regulation of Administration) Act, 1960 and the Bihar High Schools (Constitution, Powers and Functions of Managing

Committee) Rules, 1964 and the Bihar High Schools (Service Condition) Rules, 1972 and has rightly held that the managing committee of the school concerned cannot be said to be statutory body; it is merely a body created under the provisions of the statute and the rules framed under it.