

Subas Chandra Misra Vs. Managing Committee,

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Court : Orissa

Decided On : Jan-16-1981

Reported in : AIR1981Ori120

Judge : R.N. Misra, C.J. and ;N.K. Das, J.

Acts : Orissa Education Act, 1969 - Sections 4(4) and 7(2)

Appeal No. : O.J.C. No. 296 of 1979

Appellant : Subas Chandra Misra

Respondent : Managing Committee, ;nigamananda Vidyapitha and anr.

Advocate for Def. : S.N. Kar, Adv. and ;Standing Counsel

Advocate for Pet/Ap. : R.K. Mohapatra, Adv.

Disposition : Petition allowed

Judgement :

Misra, C.J.

1. Nigamananda Vidya-pitha founded in the year 1963 is an 'aided educational institution' under the Orissa Education Act of 1969. Petitioner an arts graduate with a bachelor's degree in education, joined the school as Headmaster in July, 1964. By 1967, the institution was recognised as a full-fledged high school and from the

year 1969 it started receiving grants-in-aid from the State Government. On 17-2-1972 petitioner was confirmed in his post and started contributing to the Teacher's Provident Fund. The constitution of the Managing Committee of the school was for the first time approved on 8-7-1975. According to the petitioner the school is located within Daulatabad area of Choudwar Municipality, A dispute arose between the residents of Daulatabad including one Sri Bansidhar Behera, the then Secretary of the Managing Committee of the School on one side and the inhabitants of a neighbouring village Chasapada by name over the title to the land on which the school building had been raised and gradually the relationship became bitter. In the meantime the petitioner had purchased a plot of land in Chasapada area and wanted to raise a house and shift over there. The Secretary and his henchmen did not like the petitioner to live in Chasapada area and over that question gradually the relationship of the parties became bitter. Attempts were made to victimise the petitioner by making frivolous allegations against him. During the summer vacation of 1978, an attempt was made to forcibly drive the petitioner out of the institution and when the school reopened after the long vacation, possession was forcibly taken of all records and papers available in the office and the petitioner was asked to keep himself out of the institution. These facts were reported forthwith to the Circle Inspector of Schools by the petitioner and he was requested to immediately intervene, but nothing happened and, therefore, the petitioner was forced to apply for leave. The Management requested the Inspector of Schools to authorise Sri P. C. Rout, an Assistant Teacher, to remain in charge of the management and administration of the school and upon approval thereof Sri Rout took over charge of the office. In August, 1978, the Secretary made some wild allegations against the petitioner, and on Sri Isaac Das being elected as President of the Managing Committee at a meeting convened by Bansidhar Behera as Secretary, petitioner was ordered to be suspended from service and Sri. P. C. Rout, Assistant Teacher, remained in charge of the office. In this application, petitioner has asked for quashing of the charge under Annexure-3 and of the order of suspension under Annexure-10, on the basis that the Managing Committee was nonexistent, in the eye of law on the date of framing of charges and passing the consequential order of suspension, and, therefore, the proceedings are vitiated in entirety and the order of suspension cannot be

considered to be legitimate.

2. Annexure-6 is the order of the Inspector of Schools dated 8-7-1975, approving the constitution of the Managing Committee of the School- Though different dates have been shown in Annexure-6, it is not disputed that the letter is dated 8-7-1975 and the nomination of Sri Bansidhar Behera as Secretary was accepted with effect from 12-5-1974. According to the petitioner, one-third of the members are to annually retire and by the end of the three years, unless there was special permission of the Director of Public Instruction as required under Article 286 (7) of the Orissa Education Code, all the elected members were supposed to have run out their term. Article 286 (7), as far as material, reads thus :--

'The term of office of ordinary members shall not exceed three years and those members who have completed three years shall not be eligible for re-appointment for the next three years in Municipal areas except with the special permission of the Director of Public Instruction.....'

The question as to whether the school is located within municipal area has been seriously disputed at the Bar during hearing of the application. Petitioner has placed reliance on Annexure-18 which is a letter from the Executive Officer of the Chowdwar Municipality to the Inspector of Schools, Cuttack I Circle, providing information regarding situation of the school. The text of the letter runs thus :--

'With reference to your letter No and subject cited above, I am to say that Nigamananda Vidyapitha, Daulata-bad, is situated inside the Municipal area of Choudwar Municipality and it is in the Ward No. XVI.....'

Reliance has also been placed on the allegations made in a writ application (OJC No. 1381 of 1978) filed by Sri Bansidhar Behera in this Court. Therein it was admitted that the School was located within the municipal area of Choudwar. While disposing of that writ application, this Court also indicated that the school was within the municipal limits. In view of such clear material supported by an admission of Bansidhar himself and the statement of fact indicated in the earlier decision of this Court, we do not think, opposite party No. 1 should be permitted to reagitate the question as to whether the school is located within the municipal

limits or outside. We conclude that the School is within the municipal limits of Choudwar and Article 286 (7) of the Education Code is applicable.

This Court in O. J. C. No. 1381 of 1978 (Bansidhar Behera v. Addl. Director of Public Instruction, Orissa) disposed of on 9-2-79, held in clear terms that without special permission obtained from the Director of Public Instruction, Bansidhar could not have been a member of the Managing Committee after July, 78. From the record, it transpires that on 20th of July 1979, the Director of Public Instruction refused to accord permission. The net effect, therefore, is that Bansidhar had ceased to be a member of the Managing Committee from July, 1978 and having ceased to be a member of the Committee, he could not have continued as Secretary of the Committee, as one of the members was entitled to be appointed the Secretary with the previous approval of the Inspector,

The contention of Mr. Kar for the opposite party No, 1 that the Managing Committee was a body corporate and its existence was not affected by the dropping out of any particular member or members, in our opinion, is not a sound one. The provisions in the Education Code are clear. Though the Managing Committee is a perpetual body, with the one third of its members retiring every year, so far as schools located in municipal areas are concerned, no member can continue for more than three years without the special permission of the Director of Public Instruction. We are inclined to agree with the submission made at the Bar on behalf of the petitioner that after July, 1978, Bansidhar Behera, had ceased to be a member of the Managing Committee and consequently was not entitled to act as Secretary thereof.

After August, 1978, at the instance of Bansidhar Behera, a meeting of the Managing Committee was convened when Sri Isaac Das was taken as a member and elected President and Sri Brajakishore Behera was also elected as member and appointed Secretary. On 1-11-1978, petitioner was placed under suspension vide Annexure-10. Petitioner at one stage was contending that suspension was a major penalty contemplated under Rule 20 (e) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974, and such a punishment could not be

imposed without following the prescribed procedure. We are not Inclined to agree with the submission that suspension in this case was inflicted as a measure of punishment, but it came as consequential order to a proposed disciplinary proceeding. R. 20 (e) has, therefore, no application. The Management wrote a letter to the Inspector of Schools for approving the suspension. Under Annexure-11, the Inspector wrote back to the institution thus:--

'As per Article 305 of the Orissa Education Code, the Secretary of the School is the corresponding agent on behalf of the managing committee and also the managing committee is disciplinary authority of the School as per provision under Rule 21 of the Orissa Education Rules, 1974, with amendments. The order of suspension of Sri Subhas Ch, Mishra, Headmaster of the school (petitioner) issued by you appears to be without authority in view of absence of the valid resolution of the managing committee and hence is not approved. Further, you are requested please to produce the managing committee resolution book and notice book of the school immediately for my reference and further consideration in the matter as per rule in vogue.'

The Inspector of Schools thereafter advised the Management to allow the petitioner to join the institution, as would appear from Annexure-14 and when the Management turned a deaf ear, this writ application was filed for the reliefs indicated above. The Management, however, did not concede. The Managing Committee which had been approved in 1975 was no more properly constituted in 1978. It is true that Bansidhar Behera had ceased to be a member when special permission was not accorded. The new Managing Committee had, however not been approved by the date the order of suspension was passed. Petitioner relies upon, the provisions of Section 7 (2) of the Orissa Education Act which provides :--

'A managing committee.. .constituted after the commencement of this Act in respect of any aided educational institution shall, before it starts functioning as such, obtain the approval of the prescribed authority in the prescribed manner: Provided.....'

There is no dispute that Sub-section (2) envisages approval of the prescribed authority as a condition precedent to functioning. Mr. Kar for the Management has,

however, contended that sub-section (2) has no application to educational institutions existing prior to 1969, when the Education Act came into force and if there had been a constitution of the Managing Committee prior to 1969, Section 7 (2) did not apply to such a school or its Committee. We find no force in such a contention. Section 4 (4) of the Act provides:--

'All existing educational institutions shall be deemed to have been established in accordance with this Act.'

It could not have been the legislative intention to provide two categories of Managing Committees--one in respect of educational institutions existing up to the statute and the other in respect of post-Act Managing Committee and to provide that the post-Act Managing Committees would start functioning after approval while the Managing Committees of pre-existing institutions should act without approval. To enter upon management with prior approval is essentially a procedural matter and as it is regulating procedure in the interests of the system, we do not think, the distinction drawn by Mr. Kar can be permitted to stand. Approval of the Management which passed the order of suspension has come during the pendency of this writ application. Suspension is thus an act prior to the approval of the new Managing Committee which came into office after 1978. Strictly in terms of Section 7 (2) of the Act, the new Committee could not have functioned without approval as a condition precedent. Mr. Kar as also learned Standing Counsel appearing for the opposite parties seriously disputed this submission on behalf of the petitioner. The objection of learned Standing Counsel was mainly on the ground of working difficulty while counsel for opposite party No. 1 took the other stand which we have already noticed. We do not think, there is any difficulty in implementing Section 7 (2) as a rule for both the categories of managing committees. In fact, the delay which usually takes place in the office of the approving authority was not intended by the statute and the scheme adopted is one where it is contemplated that timely action would be taken. The approving authority is not entitled to sit over matters for years and create confusion and statement in the management of the institutions. If power has been given to accord approval, such approval should either be accorded or refused with appropriate haste so that the functioning of the institutions may not be affected,

In our view the mandatory requirement of Sub-section (2) of Section 7 of the Education Act is applicable to all managing committees and it may be that until such approval is accorded, the outgoing men may be in charge of the school administration or it is open to Government to make some alternate arrangement for the brief intervening period, but the new Committee would not be entitled to function without approval. The order of suspension by the Babu Singh new Committee in this case thus was vitiated in the eye of law and cannot operate.

3. We would accordingly allow the writ application, quash the charges and vacate the suspension of the petitioner from service. The petitioner should report to duty within two weeks from today and the Management is directed to implement the order of the Inspector in permitting the petitioner to serve as the Headmaster. Petitioner has been kept out of employment unauthorisedly and, therefore, would be entitled to salary for the period he has been kept out of employment. We express no opinion as to whether petitioner should be subjected to a fresh disciplinary proceeding as it is a matter within the jurisdiction of the employer-managing committee.

4. There would be no order for costs.

Das, J.

5. I agree.

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