

Olive E. Malaki Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-06-2005

Reported in : AIR2005Raj296; RLW2005(3)Raj1636; 2005(3)WLC98

Judge : Shiv Kumar Sharma and; K.S. Rathore, JJ.

Acts : Rajasthan Non Government Educational Institution Act, 1989 - Sections 2, 9, 9(2) and 10; Rajasthan Societies Registration Act; Rajasthan Public Trust Act, 1959; Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc.) Rules, 1993 - Rules 23, 23(2), 23(3) and 24

Appeal No. : D.B. Civil Writ Petition No. 5544 of 2003

Appellant : Olive E. Malaki

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : Prem Asopa, Sr. Adv. and; Amit Kuri, Adv.,; Mohd. Rafiq

Judgement :

K.S. Rathore, J.

1. Since in all these writ petitions similar question of law are involved, the same are being decided by this common judgment.

2. In all the aforesaid writ petitions the provisions of the Rajasthan Non Government Educational Institution Act, 1989 (for short, the Act of 1989) and the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc.) Rules, 1993 (for short, the Rules of 1993) are challenged and main challenge with regard to the election of the Managing Committee as per Section 9 of the Act read with Rule 23 of the rules of 1993.

3. Under Sub-section 2 (h) the Educational Society or educational agency is defined. 'Educational Society' or 'educational agency' means any trust, person or body of persons permitted to establish or maintain in recognized non-Government educational institution.

4. As in view of Section 2(h) the non educational institution can be established on maintained by the trust or person or body of persons. Here in the aforesaid writ petitions there are tow sets of writ petitions; one institution is run by the trust (i.e., writ petition No. 5544/03 Olive E. Malaki v. State) and Another set of writ petitions are run by the society under the Rajasthan Society Act (i.e., writ petition No. 6676/93 Sri Gura Nanak Dev Satsangh v. State and writ petition No. 3563/93 Sree Jain Swetamber Terapanthi Shiksha Samiti 7 Ors. v. State).

5. In Section 2(o) of the Act of 1989 'management' or 'managing committee' has been defined The 'management' or 'managing committee' means the committee of management constituted under Section 9 and includes that Secretary or any other person, by whatever name designated, vested with the authority to manage and conduct the affairs of the institution meaning thereby that for management of the committee and day to day affairs of the institution, the constitution of managing committee as per Section 9 is necessary.

6. Clause 2(p) deals with regard to non government education institution that means any college, school, training institute or any other institution, by whatever name designated, established and run with the object of imparting education or preparing or training students for obtaining any certificate, degree, diploma or any academic distinction recognized by the State or Central Government or functioning for the educational, cultural or physical development of the people in the State and which is neither owned nor managed by the State or Central Government for by

any University or local authority or other authority owned or controlled by the State or Central Government.

7. Section 9 deals with the Constitution of managing committee which reads as under :-

9. Constitution of a managing committee-(1) There shall be constituted a managing committee for every recognized institution.

(2) The managing committee of every recognized institution shall elect a Secretary from amongst its members. An employee of the institution shall neither be the Secretary nor the treasurer.

(3) The Secretary will perform such functions and exercise such rights as may be prescribed.

8. A bare perusal of Section 9 of the Act of 1989 reveals that it is mandatory to constitute a managing committee for every recognized institution and in Sub-section 2 of Section 9 the recognized institution shall elect a Secretary from amongst its members and there is a rider that a employee of the institution shall neither be the Secretary nor the treasurer.

9. The recognized institution is defined in Section 2(q) which means a non-Government educational institution affiliated to any University or recognized by the Board, Director of Education or any officer authorized by the State Government or the Director of Education.

10. Here, in these writ petitions all the institutions are recognized and it is mandatory to constitute and hold election from amongst its members as per Section 9 of the Act.

11. The procedure of constitution of management committee is laid down in Rule 23 which reads as under:-

23. (1) There shall be constituted a Managing committee for every recognized institution in the manner prescribed as under:-

(a) The Managing Committee shall consist of not less than 15 and not more than 21 members including the Head or Heads of the institution or institutions run by the Society.

(b) Not more than two thirds of the members of the managing committee shall belong to any one community, caste or sect.

(c) Not less than one third of the total membership should be from amongst donors or subscribers.

Explanation-A person donating Rs. 2,000/- or more at a time or at least Rs. 50/- p.m. For a continuous period of twelve months or more to the institutions shall be considered as donor.

(d) One elected member from amongst the permanent staff shall be included in the managing committee.

(e) Director of Education shall nominate an officer of the department, not below the rank of the head of the concerned constitution or an eminent educationist, to be a member of the managing committee.

(f) At least one members hall be co-opted from amongst the parents of the students of the institution or institutions run by the management.

(g) At least one reputed old student of the institution shall be co-opted as member by the members of the managing committee.

(h) The management shall hold elections after every three years and constitution a new managing committee.

(2) The managing committee shall adopt the following procedure for conducting elections:-

(a) An election officer shall be nominated.

(b) The election officer shall issue a notice of election to all the members of the electoral College at least one month before the date fixed for election.

(c) The notice for election shall specify the date, place and time of election.

(d) The election officer shall maintain the entire election record including the names of the candidates who contested the election as well as of the candidates elected and the number of votes polled in their favour.

(e) The election shall take place by a secret ballot and the procedure to be adopted for secret ballot shall be determined by the election officer.

(f) The Co-option by the elected members shall take place within one month of the election.

(g) Soon after the election, the managing committee shall initiate action for nomination of the departmental representative.

(3) After its constitution, the elected and nominated members of the managing committee shall elect its Chairman, Secretary and Treasurer. An employee of the institution shall neither be the Secretary nor the Treasurer.

12. A Perusal of Rule 23 Sub-rule (1)(a) reveals that the Managing Committee shall consist of not less than 15 and not more than 21 members including the Head of the institution or institutions run by the society and in Clause (1)(b) of Rule 23 in the managing committee number of persons belonging to one community, caste or section cannot be exceed more than two thirds of the members of the managing committee and according to Rule 1(c) not less than one third of the total membership should be from amongst donors or subscribers.

13. Under Rule 23(d)(e)(f)(g) there shall be one elected member from amongst the permanent staff in the managing committee and nominee of the Director of Education, one member shall be co-opted from amongst the parents of the students of the institution and one reputed old student of the institution be co-opted as member.

14. As per Rule 23(h) the management shall hold elections after every three years and constitute a new managing committee.

15. Sub-rule (2) of Rule 23 deals with the procedure for conducting elections and after the election of managing committee as stipulated under Sub-rule 2 of Rule 23, under Sub-rule (3) of Rule 23, the elected and nominated members of the managing committee shall elect its Chairman, Secretary and Treasurer. An employee of the institution shall neither be the Secretary nor the Treasurer.

16. So far as petitions wherein non government educational institutions registered under the Rajasthan Societies Registration Act is concerned mandatory provision of Section 9 read with Rule 23-have to be complied with in true and letter spirit. In case such institutions are not holding elections as stipulated under Section 9 and Rule 23 in such eventuality the state is at liberty to take steps under Section 10 whereby the State Government is empowered to take over the management. Section 10 reproduced as under:-

(1) Notwithstanding anything contained in any law for the time being in force, whenever it appears to the State Government that the managing committee of any recognized institution has neglected to perform any of the duties assigned to it by or under this Act or the rules made thereunder or has failed to manage the institution property and that has become necessary in the public interest to take over the management of such institution, it may, after giving to such managing committee a reasonable opportunity of showing cause against the proposed action, take over such management and appoint an administrator to exercise control over the assets of the institution and to run the institution for such period as the State Government may from time to time fix.

(2) Where, before the expiry of the period fixed under Sub-section (1), the State Government is of opinion that it is not necessary to continue the management of the institution by an administrator, such management shall be restored to the managing committee.

17. And it was made mandatory that after every three years the management shall hold election and constitute a new managing committee. After constituting new managing committee the Chairman, Secretary and Treasurer should be elected out of the member of the managing committee and in view of the submissions made On behalf of the respondents by Mr. Mohd. Rafiq, Additional Advocate

General that they have already issued instructions and identified such institutions where the elections are not held as stipulated under Section 9 and Rule 23.

18. Now the grievance remains with regard to such institutions run by the trust. The main grievance of such institutions is that recognized institution can be run by the society or by the trust but as regard to election of managing committee there is no difference between institution run by the Society or trust which is evident from the bare perusal of Section 9 of the Act of 1989 and the rules of 1993 and it is also not disputed that there are many aided institutions where the nominated Board are continuing, despite the mandate to hold the election after every three years.

19. As in the case of Olive E. Malaki the institution Kanodia College is run by a charitable trust registered under the Rajasthan Public Trust Act, 1959 and they are legally entitled to set up educational institution as per provisions of public trust act. And in this case the non government institution has constituted a managing committee in view of Section 9 and Rule 23(1) and nominated a member elected from the staff and nominee of Director Education and one member co-opted amongst the parents and one amongst the old student. Since in the Rajasthan Non Government Educational Institutions Act under the definition there is not mention with regard to the electoral college and it is also not mentioned in the Act and the Rules that on account of resignation/death of the member of the managing committee what will be the procedure to be followed for filling up such vacancies and in absence of such provision in the Act the difficulty arisen with regard to non Government Educational institution which is run by the Trust.

20. Upon perusal of the provisions of the Act and the Rules more particularly Section 9 and Rule 23 so far as Rule 23(1)(a) to (h) it reveals that the institution run by the managing committee of the society has no difficulty to constitute managing committee. The difficulty arisen when at the time of invoking Sub-clause 2 of Rule 23 wherein in Clause (a) the election officer shall be nominated and as per Clause (b) election officer shall issue a notice of election to all the members of the electoral College at least one month before the date fixed for election.

21. Since electoral College has not been defined in the act whereas in the institution run by the society the electoral college has to be incorporated even at

the time of registration of such society, whereas, there is no provision in the Public Trust Act with regard to electoral college.

22. In such circumstances, since the Act and the Rules are silent with regard to electoral College, we are of the view that in the institutions which are run by the Trust the constitution of management committee is mandatory and managing committee may increase number of the managing committee as specified in Sub-clause 1(a) of Rule 23 and after constitution of managing committee, the managing committee shall elect Chairman, Secretary and Treasurer so far electoral College is concerned, in the case of the institution which are run by the Trust, it is for the trustees to prepare the electoral college and after preparing the electoral college they have to conduct the election after every three years and constitute new managing committee as per provision of Rule 1(h) of Rule 23 and after preparation of the electoral college, the election officer can be nominated by the Director or any other competent person to hold the election of managing committee.

23. Upon perusal of Rule 24 which deals with the functions and powers of the managing committee reveals that as to how the managing committee shall be responsible for the proper management of the institution and as to how the managing committee shall perform such functions and have such powers as specified in the bye-laws of the institutions.

24. As already stated herein above that in the case of society the institution which are registered under the Rajasthan Societies Registration Act there are bye law to regulate the functions of the managing committee whereas in the institution run by the trust, the institution shall exercise power to achieve aims and objects as stipulated in the Trust deed and as per the provisions of the Trust Act.

25. To strike the balance we further deem it proper to hold that in case any member of the managing committee or electoral college the activity of any member is found against the aims and objects of the institution the trustees shall have power to remove such member after giving show cause notice to the members and after affording opportunity of being heard to such members.

26. With these observations, all the writ petitions stand disposed of.

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