

(1993) 09 RAJ CK 0022

Rajasthan High Court

Case No: Civil Writ Petition No. 4145 of 1993

Ravindra Kumar Sabu

APPELLANT

Vs

The State of Rajasthan and
Others

RESPONDENT

Date of Decision: Sept. 23, 1993

Acts Referred:

- Constitution of India, 1950 - Article 226
- Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc. Rules, 1993 - Rule 23
- Rajasthan Non-Government Educational Institutions Act, 1989 - Section 43, 9

Citation: AIR 1994 Raj 36 : (1993) 2 WLC 721

Hon'ble Judges: N.L. Tibrewal, J

Bench: Single Bench

Advocate: Ghanshyam Das Mundra, R.P. Garg and C.K. Garg, for the Appellant; A.K. Sharma, S.K. Keshote and H.N. Bhandari, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.L. Tibrewal, J.

Final arguments were heard on request of learned counsel for the parties in view of the urgency in the case.

I wished the present litigation had been avoided and the members of "Maheshwari Samaj" could resolve their misunderstandings/disputes by themselves in a spirit of cooperation, co-ordination and respect for each other. It appears that last elections of "Shri Maheshwari Samaj" (hereinafter referred to as "the Samaj" or "the Society"), left bitterness in the members, as it often takes place when elections are fought with unwanted zeal and enthusiasm to exhibit supremacy in the Community. My anxiety and worry is for three educational institutions which are being run by the Society. Non-co-operation and feeling of hatred in members of the Society may adversely

affect proper working and functioning of the educational institutions, which have earned high reputation and goodwill and cater the need of about 6,000 students, which itself is commendable. I hope and trust that members of "Shri Maheshwari Samaj" which is taken to be an enlightened society, will try to forget the scars/wounds of the last elections. Like past, they will rise to the occasion and in a spirit of respect and affection for each other, shall work together for betterment of the Community and the educational-institutions.

2. Shri Maheshwari Samaj is a Society registered under the Rajasthan Societies Registration Act, 1958, in the year 1960. The Society was established with lofty ideals and objectives as declared by its Memorandum of Association. The object of the Society has been stated as under:--

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Thus, the very existence of the "Society" is for service, co-operation, unity and to work for development of its members. As per reply of respondent No. 3, Shri Kanhaiya Lal Sardar, the total number of members of "Maheshwari Samaj" in Jaipur, is 15000, out of which 8000 persons are members of the "Society". As per Rules of the Society, the Executive Committee manages all affairs of the Society. It is constituted for two years and consists of 51 members. The pleadings of the parties reveal that last elections of the Society had taken place in July 4, 1993, and the election of office bearers was held on July 17. Then, there is an Education Committee of the Society, which consists of eleven members to be nominated by its Executive Committee. Though, the Education Committee is separately registered, yet it is a part of the parent Society, i.e. "Shri Maheshwari Samaj".

3. Before Rajasthan Non-Government Educational Institution Act, 1989 (for short "the Act") and Rajasthan Non-Government Educational Institutions (Recognition Grant-in-aid, Service Conditions Etc.) Rules, 1993 (for short "the Rules"), came into force on 1-1-93, and 1-4-1993, respectively, the Grant-in-Aid Rules, 1963, were in force. Appendix I of the Rules provided formation of a Managing Committee/Governing Council for an institution run by a Society. It is an admitted case before me that all the three Educational Institutions run by the Society were having their separate Managing-Committee/Governing Council vested with an authority to manage and conduct the affairs of the institution. Admittedly, new Managing Committees have not been constituted as per the Act and the Rules, which provide a procedure for constitution of a Managing-Committee. The old Managing Committees were functioning when last election of the members of Executive Committee of the Society took place on July 4, 1993, or the election of the office bearers took place on July 17. After the elections in July, 1993, a tug of war appears to have started in two factions of the Society. The attempt of newly elected office bearers is to assume or take charge of the management of the

Educational-Institutions even without constitution of new Managing Committees in accordance with the provisions of the Act and the Rules; while the attempt of the members of existing Managing Committees is to keep their existence and hold in the Community. It may be stated here that there are no allegations of misconduct against any member of the old existing Managing Committee or that they misused the powers or acted against the interest of the Institutions. In such a situation, the question is what orders should be passed to protect proper functioning of the educational institutions from being effected by disputes amongst members of the Society, and to further protect the members from wasting their energy, time and money in litigations.

4. The contention of the learned counsel for the petitioner is that till a new Managing Committee is constituted for each of the educational institutions, the existing Committees should be allowed to function, and that the members of such Committees have a right to continue till new Committees are constituted in accordance with the present Rules. On the other hand, the learned counsel for respondent No. 3 and the applicant Ghanshyam Das contended that the old Managing Committees have ceased to exist automatically after the new elections and to manage and lookafter the affairs of the Educational Institutions as confidence was reposed in them by the Community members. However, in the course of arguments, it was candidly conceded by the learned counsel that Managing Committees were not constituted as per existing provisions of the Act and the Rules, but their contention is that till a valid Managing Committee is constituted for each Institution, the elected office bearers of the Society have a right to manage its affairs. It Was also contended by Mr. C.K. Garg that the Education Committee nominated by the Society as per its Regulations is nothing but a Managing-Committee/Governing Council. Then, it was contended that the petitioner has no locus standi to maintain the petition and the petition is not maintainable under Article 226 of the Constitution.

5. I have given my careful and anxious consideration to the respective contentions made by the learned counsel for the parties. Before I advert to the contentions of the learned counsel, I think it proper to discuss relevant provisions of the Act of 1989 and the Rules. The Rajasthan Non-Government Educational Institutions Act, 1989, received assent of the President on 4th day of June, 1992, and it came into force on 1-1-93. Before this Act, there was no statutory provision requiring formation/constitution of a Managing Committee. Under the Grant-in-Aid Rules, 1963, which were only executive instructions, an institution getting . grants under it was required to form a Managing Committee/Governing Council consisting of not more than 15 members plus Head or Heads of the Institution or Institutions run by the Society. "Shri Maheshwari Samaj" was/is running three educational institutions; viz. (1) Shri Maheshwari Senior Higher Secondary School (2) Maheshwari Public School; and (3) Shri Maheshwari Balika Vidyalaya. All these Schools were having their separate Managing Committees as admitted by the learned counsel for the parties.

Section 9 of the Act requires formation of a Managing Committee for every recognised institution. It also provides that the Managing Committee shall elect a Secretary from amongst its members and that an employee of the institution shall neither be a Secretary nor the Treasurer. The Managing Committee has been defined in Section 2(o), to mean the Committee of Management constituted u/s 9 and includes Secretary or any other person by whatever name designated, vested with the authority to manage and conduct the affairs of the institution. Recognised institution has been defined under clause (g) to mean a nongovernment education institution affiliated to any University or recognised by the Board, the Director of Education or any officer authorised by the State Government or the Director of Education in this behalf. The "Board" has been defined under clause (c) to mean the Board of Secondary Education, Rajasthan or the Central Board of Secondary Education, Delhi and shall include the Council for Indian School Certificate Examinations.

The Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-Aid and Service Conditions etc.) Rules, 1993, have been framed by the State Government in exercise of powers conferred to it by Section 43 of the Act. Chapter IV of the Rules, provides constitution of a Managing Committee and the procedure for its formation. Rule 23 is relevant, it reads as under:--

"23(1). There shall be constituted a Managing Committee for every recognised 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 institution shall be considered as doner.

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

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

(f) At least one member shall 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 constitute 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."

It may also be stated that the Secretary of a Managing Committee or any other person duly authorised by the Committee, manages and administers the properties of the Institutions as provided u/s 11 of the Act. For aided institution he is also required to furnish annual statement of properties in the manner provided in Section 12. Then, penalty is provided u/s 34 for not discharging the duties of a Secretary. Section 38 provided that every officer and authority duly authorised by the State Government to perform any function or discharge any duty imposed on him or it under this Act to be a public Servant within the meaning of Section 21 of the I.P.C. Then, Section 10 empowers the State Government to take over management of any institution in the eventualities mentioned in the Section.

The aforesaid provisions of the Act and the Rules, therefore, make it clear that a new Managing Committee after 1-4-1993, can be formed/constituted in the manner

provided in Rule 23 and the Managing Committee alone is competent to manage and conduct the affairs of the Institution.

6. In the background of aforesaid provisions, I may now deal with the contentions urged by the learned counsel for the parties. First, I may take up preliminary objections.

The first objection relates to the locus standi of the petitioner to maintain the petition. The petitioner is a member of Maheshwari Samaj. He also claims to be a social worker. He is "Sangthan Mantri" of "Maheshwari Navyuvak Mandal" and claims to be interested in the welfare of the Society. The above facts stated in Para 1 of the petition have not been denied by the contesting respondent No. 3, and in reply to it he only stated that the writ petition was filed with an oblique motive and that the petitioner did not come with clean hands.

In [Bangalore Medical Trust Vs. B.S. Muddappa and others](#), R.M. Sahai, J. discussed the problem of locus standi as under (at page 1915 of AIR) :--

"Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspect, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose part was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservance yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards free movements both in nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek

shelter under cover of technicalities of locus standi or they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations."

In [People's Union for Democratic Rights and Others Vs. Union of India \(UOI\) and Others](#), their Lordships of the Supreme Court observed as under (at page 1482 of AIR) :--

"It is true that the complaint of petitioners in the writ petition is in regard to the violations of the provisions of various labour laws designed for the welfare of workman and, therefore, from a strictly traditional point of view, it would be only the workmen whose legal rights are violated who would be entitled to approach the court for judicial redress. But the traditional rule of standing which confines access to the judicial process only to those to whom legal injury is caused or legal wrong is done has now been jettisoned by this Court and the narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo-Saxon system of jurisprudence have been broken and a new dimension has been given to the doctrine of locus standi which has revolutionised the whole concept of access to justice in a way not known before to the western systems of jurisprudence."

In the instant case, the main grievance of the petitioner is in regard to the violations of the provisions of the Act and the Rules. His anxiety is that the three Educational Institutions run by "Shri Maheshwari Samaj" should be managed by validly constituted Managing Committees. Looking to the issues involved in the petition and the nature of the reliefs sought, I am of the view that any member of "Maheshwari Samaj" can maintain the writ petition. The petitioner is not only a member of the "Samaj" but is a social worker also and "Sanghthan Mantri" of "Maheshwari Navyuvak Mandal", as such, it cannot be said that he has no interest in proper functioning of the educational institutions run by the Society. I, therefore, reject the preliminary objection that the petitioner has no locus standi to maintain the writ petition.

The second limb of preliminary objections is that the petition is not maintainable under Article 226 of the Constitution. Mr. S.K. Keshote, learned counsel appearing for respondent No. 3, stoutly contended that no relief has been prayed against the State of Rajasthan (respondent No. 1) and other respondents are private persons and do not fall in the definition of a "State" and as such, no mandamus can be issued to them.

The primary dispute in the petition relates to the constitution of "Managing Committees" for educational institutions run by "Shri Maheshwari Samaj". No private educational institution can survive or subsist without recognition and/or affiliation. The bodies, which grant recognition and/or affiliation, are the authorities of the State. There is no dispute that all the three educational institutions of the

"Society" are recognised institutions. Section 9 of the Act now makes it obligatory for every recognised institution to have a separate managing committee. It is a statutory body now and its formation/constitution is to be in accordance with Rule 23 of the Rules. The Managing Committee is vested with the authority to manage and conduct the affairs of an institution. Besides, it has to perform statutory functions prescribed in the Act of 1989, and the Rules. The Managing Committee of every recognised institution is required to elect a Secretary from amongst its members and he performs such function and exercises such powers as prescribed in the Act and the Rules. Chapter VII prescribes various functions and penalties for contravention of some provisions of the Act or for not discharging the duties.

7-8. In a recent judgment, in the case of [Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.](#), the Apex Court of the Country had an occasion to consider this aspect. Mohan, J., after an analysis of the entire case law on the subject stated as under :--

"As a sequel to this, an important question arises : What is the nature of functions discharged by these institutions? They discharge a public duty. If a student desires to acquire a degree, for example, in medicine, he will have to route through a medical college. These medical colleges are the instruments to attain the qualification. If, therefore, what is discharged by the educational institution is a public duty, that requires duty to act fairly. In such a case, it will be subject to Article 14."

The observations made in paragraph 79 may also be useful to be reproduced. They are:--

"The emphasis in this case is as to the nature of duty imposed on the body. It requires to be observed that the meaning of authority under Article 226 came to be laid down distinguishing the same term from Article 12. In spite of it, if the emphasis is on the nature of duty on the same principle it has to be held that these educational institutions discharge public duties. Irrespective of the educational institutions receiving aid, it should be held that it is a public duty. The absence of aid does not detract from the nature of duty."

While analysing the case law on the subject, a reference was made by their lordships on a decision of the Supreme Court in [Tekraj Vasandi alias K.L. Basandhi Vs. Union of India \(UOI\) and Others](#), wherein it was observed as under:--

"We have several cases of societies registered under Societies Registration Act which have been treated as "State" but in each of those cases it would appear on analysis that either governmental business had been undertaken by the Society or what was expected to be the public obligation of the "State" had been undertaken to be performed as a part of the Society's function. In a Welfare State, as has been pointed out on more than one occasion by this Court, governmental control is very pervasive and in fact touches all aspect of social existence. In the absence of a fair

application of the tests to be made, there is possibility of turning every non-governmental society into an agency or instrumentality of the State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion. Having given our anxious consideration to the facts of this case, we are not in a position to hold that ICPS is either an agency or instrumentality of the State so as to come within the purview of "other authorities" in Article 12 of the Constitution. We must say that ICPS is a case of its type-typical in many ways and the normal tests may perhaps not properly apply to test its character."

[Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others](#), is an interesting case where writ of mandamus was issued to a private college. In Para 20 of the Judgement, it was stated :--

"The term "authority" used in Article 226, the context must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Court to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the list of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

9. In the light and background of the above decisions and the facts that a managing committee of a recognised educational institution is now a statutory body and this body and its Secretary have to perform statutory functions in addition to manage and conduct the affairs of the institution, a Mandamus can be issued under Article 226 of the Constitution to see that the statutory bodies i.e. the Managing Committees of the institution are constituted and function in the manner prescribed in the Act of 1989 and the Rules. Further, the State of Rajasthan is a party in the petition and if necessary, a Mandamus can be issued against the State in this connection as it is for the State Government to see that a managing committee of a recognised institution does not neglect to perform any of the duties assigned to it by or under the Act of 1989 or the Rules made thereunder or that it manages the institution properly. Section 10 empowers the State Government to take over management of a recognised institution, if it becomes necessary in the public interest. Thus, taking into consideration the facts and the law, I am convinced that this court can issue Mandamus in a proper case to see that statutory bodies are

properly constituted and that they function in accordance with law. I, therefore, reject the second preliminary objection also.

10. Having rejected preliminary objections, the matter may be considered on merits. Some facts are either not disputed or cannot be disputed. They are :-- (i) the three educational Institutions, viz. (a) Shri Maheshwari Senior Higher Secondary School; (b) Maheshwari Public School and (c) Shri Maheshwari Balika Vidyalaya; are recognised institutions of the Society i.e. Shri Maheshwari Samaj; (ii) All these institutions were having their managing committees when the Act and the Rules came into force; and those committees were functioning and managing the affairs of the institutions (iii) new managing committees for these institutions have not been formed/constituted as prescribed in the Act of 1989 and the Rules;

(iv) Elections of Shri Maheshwari Samaj to elect members of the Executive Committee and the President were held on 4-7-1993, and to elect office bearers were held on 17-7-1993; (v) on 16-7-1993, while issuing notice to the respondents, this Court passed ad interim order in the following terms:--

"Meanwhile the respondents shall be free to constitute an Executive Committee of Maheshwari Samaj, by election, but, if any managing Committee is constituted for three institutions, which are recognised institutions, the same shall be constituted in accordance with Section 9 of the Rajasthan Non-Government Educational Institution Act, 1989 and Rule 23 of the concerned Rules, 1993."

11. In the background of the aforesaid undisputed facts, further question remains for consideration as to what order should be passed in the petition? The contention of Mr. R.P. Garg and Mr. U.N. Bhandari, learned counsel appearing for the petitioner and respondent No. 4 respectively, is that the Managing Committees, which are in existence when the Act and the Rules came into force, are still in existence as they have not been superseded by formation/constitution of new Committees under the Act or the Rules. Therefore, the members of these committees are entitled to manage and conduct affairs of the institutions. On the other hand, Mr. S.K. Keshote and Mr. C.K. Garg representing the new elected office bearers of Shri Maheshwari Samaj stoutly challenged and opposed the above contention. According to them, the elected office bearers of the Society are the authorised person to manage and conduct the affairs of the educational institutions as confidence has been reposed in them by the electorates. It was also contended that necessary amendments in the Constitution of "Shri Maheshwari Samaj" shall be required to be in conformity with the provisions of the Act of 1989 and the Rules and this will take sometime. Learned counsel, therefore, urged that till necessary amendments are made in the constitution of the Society and Managing Committees are constituted as per the Act and the Rules, the Education Committee of Shri Maheshwari Samaj should be treated as a managing committee.

12. I have pondered over the entire matter more than once. I may apprehend that if inner disputes amongst the members of the Society are allowed to continue in relation to the right to manage and conduct the affairs of the educational institutions, it shall seriously affect their proper working and development. The so called new Education Committee constituted by Shri Maheshwari Samaj can not be a managing committee under the Act/Rules, as it was not constituted in the manner as provided in the Rules. A managing committee can now be constituted only as prescribed in Rule 23. No managing committee can now be constituted in violation of the statutory provisions, especially when the members of the committee and its secretary are required to perform statutory duties and their violation may warrant imposition of penalty under the Act. Similarly, it would also not be just and proper that the old managing committee should be allowed to manage and conduct the affairs of the institutions, after their members were defeated in the last elections of Shri Maheshwari Samaj. I wish that the members of Shri Maheshwari Samaj should" now forget the bitterness of the last elections and should work in unity and co-operation for the development and betterment of the educational institutions. After giving my anxious consideration, I came to the conclusion that till managing committees are constituted for each of the educational institutions, an ad hoc arrangement should be made by this Court to manage and conduct the affairs of the institutions and for this co-operation from both the factions should be obtained. I, therefore, constitute an interim body/committee consisting of the following members:--

1. Shri Heera Lal Maheshwari,
2. " K.L. Sarda,
3. " Radhey Shyam Dhoot,
4. " Ghan Shyam Das Mundra,
5. " Jamna Das Ajmera,
6. " Sagar Mal Jain, Principal,
7. " B. L. Mandhana Advocate,

Shri B. L. Mandhana will act as the Convenor/ Secretary.

The above Body shall perform the functions and duties of a managing committee for all the three Insitutions as provided in the Act and the Rules. Shri B.L. Mandhana shall perform the functions and duties of the Secretary. He shall be authorised to operate the Bank account of all Institutions so that their day to day function and payment of salary to the employees may not hamper. He is also nominated as an Election Officer for holding the elections of the Managing Committees as per Rule 23. This Body shall perform the functions and duties of a managing committee for all the three educational institutions till Managing Committees are formed/

constituted.

The Society of Shri Maheshwari Samaj shall be free to amend its constitution or the constitution of its Education Committee within two months from today, if it so desires. After necessary amendments are made by the Society in its constitution or rules, the elections shall be conducted by the Election Officer as per the Rules of 1993. In case no such amendments are made in two months, the Election Officer as nominated by the order shall proceed to hold elections of all the three managing committees. In that situation each Managing Committee shall consist of 15 members, including the Head of the concerned institution and the remaining members shall be elected or co-opted as provided in Rule 23 of the Rules. After constitution of new Managing Committees and the election of the Chairman, Secretary and Treasurer, the present interim arrangement shall cease to function. The convenor B.L. Mandhana shall obtain written consent of all other six members of the interim Committee and in case they or any one of them refuse to act as member of the ad hoc Body, Mr. Mandhana will move an application before the Court to nominate other members. Mr. Mandhana shall endeavour to obtain the co-operation from all the members of Shri Maheshwari Samaj.

The writ petition is disposed of as indicated above. No order as to costs.