

(1971) PLJR 311

Patna High Court

Case No: C.W.J.C. No. 2061 of 1970

Sri Bipin Bihari Sinha

APPELLANT

Vs

The President, Board of
Secondary Education
and Others

RESPONDENT

Date of Decision: March 3, 1971

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1971) PLJR 311

Hon'ble Judges: G.N. Prasad, J

Bench: Single Bench

Advocate: Basudeva Prasad, R.N. Sahai and Narendar Prasad, for the Appellant; J.C. Sinha and R.P. Katriar, for the Respondent

Final Decision: Allowed

Judgement

G.N. Prasad, J.

The petitioner has obtained this rule calling upon the respondents to show cause as to why the order of the President of the Board of Secondary Education (respondent no. 1) dated 17th December, 1970 communicated to him under the letter of the Secretary of the Board (respondent no. 2) on 21st December:-1970, a copy of which is Annexure "1" to the writ application, be not called up and quashed by the issue of an appropriate writ under Article 226 of the Constitution. The relevant facts are as follows: There is a Government aided high school at Dehri-on-Sone, known as "Ramarani Jain Balika Uchch Vidyalaya". This school had a 5-member Ad-hoc Committee until the 22nd May, 1969 with Shri V. Poddar (respondent no. 4) as its President. Under a general notification bearing serial no 1158 issued by the President of the Board of Secondary Education the 5-member Ad-hoc Committee stood dissolved and respondent no. 4 became the sole member of the Ad-hoc Committee of the School with effect from the 23rd May, 1969. Thereafter steps were taken for the constitution of a regular managing committee as

contemplated by the Bihar High Schools (Constitution, Powers and Functions of Managing Committees) Rules, 1964--hereinafter to be called the Rules--framed under the rule making power of the State Government contained in Section 8 of the Bihar High Schools (Control and Regulation of Administration) Act, 1960 (Bihar Act 13 of 1960)--hereinafter to be referred to as the Act.

2. According to the allegations contained in the writ application, the regular Managing Committee was duly constituted on the 13th June, 1970 with the petitioner as its Secretary and one Dr. Vishwanath Ram as the President. Another member of the regular Managing Committee was Shri J.K. Jain (respondent no. 3) who was elected as the hereditary member thereof. The further case of the petitioner is set out in Paragraphs 7 and 8 of the writ application, the substance of which is that since after the constitution of the regular Managing Committee on the 13th June, 1970 the said Managing Committee had begun to function smoothly and continued to function as aforesaid until the 21st December, 1970 when the petitioner received a letter from the Secretary of the Board of Secondary Education, a copy of which, as already stated, is Annexure "1" to the writ application. The order of the President of the Board of Secondary Education thus communicated to the petitioner was to the effect that the functioning of the Managing Committee, which had been constituted on the 13th June, 1970, would remain suspended and the previous 1-member Ad-hoc Committee represented by respondent no. 4 would act as the Managing Committee of the school. In Paragraph 8 of the writ application, it has been stated that the Managing Committee, of which the petitioner is the Secretary, was never heard in the matter and the order of suspension was in gross violation of the principle of natural justice. Accordingly the petitioner filed the present writ application in this Court on the 22nd December, 1970.

3. Cause has been shown on behalf of respondents 1 and 2 by the learned Government Pleader Mr. Katriar, and on behalf of respondents 3 and 4 by Mr. J.C. Sinha. A counter affidavit has also been filed on behalf of respondents 3 and 4 setting out the circumstances under which the impugned order contained in Annexure "1" came to be passed.

4. In substance the case set up on behalf of the respondents is that a representation against the formation of the Managing Committee, which was done on the 13th June, 1970, had been addressed by respondent no. 3 to the Education Minister on the 11th November, 1970 and it was this representation which was forwarded by the Education Minister to the President of the Board of Secondary Education, that the impugned order of stay was passed on the 17th December, 1970, since the representation was entertained as a dispute within the meaning of Rule 40 of the Rules, which is in the following terms--

If any dispute arises whether any person has been duly declared elected, selected or co-opted as, or is entitled to be a donor, life-member, hereditary member, President, Secretary, or a member of the Managing Committee, as the case may be, the matter shall be referred to the President of the Board of Secondary Education whose decision thereon

shall be final.

The further case of the respondents is that the appeal contemplated by Rule 40 was fixed for hearing on the 8th February, 1971 and a notice to that effect had been given to the petitioner and other persons concerned.

5. The contention of Mr. Basudev Prasad, appearing in support of the rule, is that an order of the nature contained in Annexure "1" cannot be passed under Rule 40. Learned counsel has also referred to Section 5 of the Act, Sub-section (2) of which is in the following terms--

If the Board is of the opinion that the Managing Committee of a High 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 property, 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:

It is argued that the only power which the Board has is to pass an order of suspension or dissolution of the Managing Committee of a High School in the circumstances mentioned in Sub-section (2) of Section 5 of the Act and in no other case and that even under Subsection (2) of Section 5 of the Act an order of suspension cannot be passed, except after giving to the Managing Committee a reasonable opportunity of being heard. In the instant case the impugned order was passed behind the back of the Managing Committee or the petitioner and without giving to him a reasonable opportunity of being heard.

6. If the impugned order can be said to have been passed in exercise of the powers of the Board u/s 5(2) of the Act then it is manifest that it cannot be supported for the simple reason that the order of suspension of the Managing Committee which came to be constituted on the 13th June, 1970 was passed without giving to it any opportunity, far less a reasonable opportunity, of being heard and, therefore, on that ground the impugned order must be struck down as invalid.

7. Mr. J.C. Sinha, appearing for respondents 3 and 4, however, contended that Section 5(2) of the Act had no application to the facts and circumstances of this case, inasmuch as none of the contingencies envisaged therein existed and, therefore, the impugned order must be deemed to have been passed under Rule 40 of the Rules. The question then raised whether any such interim order of suspension could be passed under Rule 40. In order to appreciate the scope of Rule 40, it will be helpful to refer to Rule 36 also. Rule 36 lays down, when the constitution of the Managing Committee will be deemed to have been completed, and it provides--

The constitution of Managing Committee of a school under these rules shall be deemed to be completed from the date on which the President and the Secretary of the said

committee are elected, appointed or nominated as the case may be.

In the present case the Managing Committee must be deemed to have been duly constituted on the 13th June, 1970 with the election of the petitioner as the Secretary and of Dr. V. Ram as the President. Even in Annexure "1", the petitioner was referred to as the Secretary of the school in question. Therefore, the Managing Committee, as contemplated by Rule 36 of the Rules, has come into existence. Rule 40 of the Rules does not contemplate a dispute concerning the constitution of Managing Committee as a whole. It envisages disputes concerning particular person or persons as to whether they have been duly elected, selected or co-opted or not. If any individual member of the Managing Committee has not been duly elected, selected or co-opted then under Rule 40 his election, selection or co-option may be called in question; but the constitution of the Managing Committee as a whole cannot be called in question under Rule 40. An argument was addressed by Mr. J.C. Sinha to the effect that the constitution of the entire Managing Committee can be called in question under Rule 40 if the election, selection or co-option of every member thereof is disputed. Reading Rule 40, as it stands, I think, it is impossible to accept this argument. Rule 40 occurs after Rule 36, which lays down when the constitution of the Managing Committee will be deemed to have been completed. Once that stage is passed, the constitution of the Managing Committee as a whole cannot be called into question by raising a dispute under Rule 40 with regard to the election, selection or co-option of an individual member thereof.

8. Assuming, however, that Mr. J.C. Sinha is right that the constitution of the entire Managing Committee can be called into question under Rule 40 in the indirect manner suggested by him, the impugned order contained in Annexure "1" cannot be supported because unlike a power of suspension contained in Section 5(2) of the Act, Rule 40 confers no power upon the President of the Board of Secondary Education to pass any interim suspension order. Rule 40 contemplates only one final order and evidently such an order must be passed after due notice to all the persons affected thereby. An interim order of suspension behind the back of the persons affected thereby cannot be supported even under Rule 40. If the President of the Board of Secondary Education feels that an urgent decision on the dispute referred to in Rule 40 is called for, then it is his duty to pass his final order expeditiously after giving due notice to all concerned and giving them a reasonable opportunity of being heard. An order of the nature contained in Annexure "1" cannot be sustained on any valid ground known to law. If an interim order of this nature was to be supported, then as there is no time limit for the disposal of a dispute under Rule 40, the power will liable to be abused because after passing the order of suspension of a duly constituted Managing Committee it would be open to the President of the Board of Secondary Education to sit tight for months before giving his final decision under Rule 40. For the aforesaid reasons, this application must be allowed. The order of the President of the Board of Secondary Education contained in Annexure "1" is quashed. The rule is made absolute. Parties will bear their own cost.