

Sri Dwarka Nath Tewari & Ors vs State Of Bihar & Ors on 13 October, 1958

Equivalent citations: AIR 1959 SUPREME COURT 249, 1959 CALLJ 105

Author: B. P. Sinha

Bench: N.H. Bhagwati, B.P. Sinha, K.N. Wanchoo

CASE NO.:

Writ Petition (civil) 105 of 1958

PETITIONER:

SRI DWARKA NATH TEWARI & ORS.

RESPONDENT:

STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 13/10/1958

BENCH:

S.R. DAS (CJ) & N.H. BHAGWATI & B.P. SINHA & K. SUBBARAO & K.N. WANCHOO

JUDGMENT:

JUDGMENT AIR 1959 SC 249 The Judgment was delivered by : B. P. SINHA B. P. SINHA, J. : This petition under Art. 32 of the Constitution is directed against certain orders passed by officers of the Bihar Government in the Education Department, in respect of the Parsa High English School, and prays for an appropriate writ, direction or order restraining them from taking possession of the school, or in any way, interfering with the internal management of the said school. The first petitioner, Shri Dwarka Nath Tewari, M. P., claims to be the President of the Managing Committee of the school, the second petitioner, Shri Murlidhar Pandey, to be the Secretary, and the petitioners 3 to 6 to be members of the Managing Committee of the school. The 7th and the last petitioner is the Parsa High English School through the Secretary, Managing Committee. The State of Bihar is the first respondent, and the Board of Education, Bihar, is the second respondent. Respondents 3, 4 and 5 are officers of the Government, who have been constituted an ad hoc Committee pending the constitution of the Managing Committee of the school, according to the rules laid down in the Education Code.

2. The application is founded on the following allegations : In 1931, in pursuance of a unanimous resolution of the local public of Parsa, Thana head-quarters in the District of Saran in Bihar, a Managing Committee was formed with the first petitioner as its Secretary and other persons as members of the Committee, to raise subscriptions for, and to manage, the proposed High English School at Parsa. The school was started in 1932, by subscriptions raised from amongst the residents of villages round about the Parsa police station. The first petitioner claims to have made a

substantial contribution to the funds of the school, in several instalments totalling over Rs.11, 000. The day-to-day management of the school was entrusted to a Managing Committee consisting of 11 members, including teachers' representatives, the Head Master for the time being, and subscribers' representatives. The Managing Committee purchased several plots of land in the name of the Secretary on behalf of the Managing Committee, and constructed the school building on the said land. Thus, the Managing Committee claim to be the owners of the school and of the land and buildings. The school is open to persons of all castes and creeds, and nominal tuition fees were charged, 10 per cent., of the total strength of the students, were granted free student ships. In 1935, the school was given recognition by the Bihar Government. In 1950, the Managing Committee of the school was asked by the Government not to charge any fees from Harijan students, and to raise the percentage of free studentships from 10 to 15 per cent, of the total strength of the school. The Government also requested the school not to charge any fees from students in the 4th and 5th classes (Primary classes). The Government gave an annual grant to the school, amounting to between two and three thousand rupees. In 1952, the Government also requested the school authorities that higher salary should be paid to the teachers, the Government undertaking to meet the extra cost thus to be incurred. Prior to June 1954 the Managing Committee of the school did not contain any nominees. After June 1954, the Bihar Government Education Code was amended so as to require the inclusion of Government nominees, guardians' representatives, subscribers' representatives and donors in the Managing Committee of the school. About the same time, changes were made in the service conditions of teachers in the schools, enabling a teacher, who is punished by a Managing Committee, to prefer an appeal to the Education Department. The said change was made without any consultation with the school authorities who were not apprised of the changed rules. The then Head Master of the school, named Sheo Kumar Mishra Sharma, on coming to know of the new changed rules about the service conditions of teachers, "began to show discourtesy to the members of the Managing Committee and began to neglect his duties and mismanage the School affairs. After several warnings to the Head Master to be of good behaviour and on his failure to do so, he was suspended by the Managing Committee towards the end of December 1955. After framing charges against him, and after receiving his explanation and hearing him, the Managing Committee found him guilty of the charges, and ordered his discharge. Soon after, on 2nd January 1956, the Managing Committee duly appointed another Head Master in his place. The discharged Head Master moved the Inspector of Schools, Tirahut Division, against the order of discharge. Under orders of the Director of Public Instruction, who is the President of the Board of Secondary Education, an inquiry was held by the Acting Secretary of the Board, who submitted his report, but no. orders appear to have been passed thereon. The Director of Public Instruction ordered a fresh joint inquiry by the Secretary of the Board and a Deputy Director of Public Instruction. They heard the President and the Secretary of the school and the Head Master, and submitted a report. On a consideration of the second report, the Board of Education held that the discharge of the former Head Master was not justified, and ordered his reinstatement. About 12th December 1957, the Board of Education addressed a letter through the Inspector of Schools, to the Secretary of the school, ordering that"

Shri Sheo Kumar Mishra Sharma should take charge of his duties as Head Master of the High School, Parsa by 16th December 1957 without fail.

"It also contained consequential orders as regards his salary during his period of suspension, his increment and provident fund contribution. It also required the re-constitution of the Managing Committee of the school with all possible speed. The letter ended with the following paragraph :

"

In case the authorities of the school flout the orders of Government an ad hoc committee be appointed to take over the management of the School and present managing committee be dissolved.

"

The discharged Head Master thereafter turned up to take charge of the school, in pursuance of the aforesaid order of the Government, but he was not allowed to do so, and was informed by the President of the school that a meeting of the Managing Committee had been called on 31st December 1957, to consider the letter aforesaid. On December 22, 1957, the District Inspector of Schools, Saran, wrote to the Inspector of Schools, Tirahut Division, informing him that the school authorities had failed to carry out Government orders contained in the letter aforesaid, and suggesting that an ad hoc committee consisting of the respondents 3 to 5 aforesaid, may be constituted to look after the management of the school. A copy of that letter was forwarded to the school authorities. On December 31, 1957, the Deputy Inspector of Schools, one of the three officers of the Government, constituting the ad hoc Committee came to the school, and asked for charge being handed over to him. He was informed that the order of the Government was illegal, and the decision of the Managing Committee, which was to meet that very day, will be communicated to the authorities in due course.

3. It is not necessary for the purposes of this case to refer in detail to the infructuous proceedings taken in the High Court under Art. 226 of the Constitution, and to the attempts by the school authorities to obtain a temporary injunction against the members of the ad hoc committee and the discharged Head Master who had been ordered to be reinstated, by way of interlocutory petitions in the suit instituted by the second petitioner in the Court of the Subordinate Judge of Chapra (headquarters of District Saran). The Court's order refusing such a temporary injunction restraining the defendants from taking charge of the school, was upheld by the High Court in its revisional jurisdiction, by its order dated May 13, 1958. After the petitioners had failed to get any relief from the Courts aforesaid in those proceedings, they got into touch with the officials of the Government of Bihar, for explaining their position vis-a-vis the management of the school, and the legal position of the Managing Committee of the school. Ultimately, on July 31, 1958, the first petitioner received a letter dated July 28, 1958, from the third respondent to the effect that in view of the Court's refusal to issue any injunction against the ad hoc committee, he, as the President of that committee, proposed to take charge of the school on August 14, 1958, and he requested him to hand over complete charge of the school to the ad hoc committee. In view of the letter aforesaid, the petitioners moved this Court under Art. 32 of the Constitution, for the protection of their alleged fundamental rights to property. They alleged that they apprehended"

that if charge is not given over as requested in the said letter. possession will be taken by force with the aid of the police and local executive authorities.

"They also moved this Court for an ex parte order staying the handing over of the school and its property to the respondents. By its order dated August 11, 1958, this Court granted ex parte stay till the hearing of the Notice of Motion. In answer to the Notice of Motion, the 4th respondent swore an affidavit to the effect that it was not sought to interfere with the property, of the school, but with the management thereof, in the interest of the public; that the order dated July 28, 1953, was in accordance with the provisions of the Bihar Education Code which had the force of law; that the petitioners had failed to obtain an injunction or order from the Courts below in a pending suit in which identical questions has been raised; that by the order aforesaid of the Government, it was not intended to take over the management of the school, but to re-constitute an efficient Committee of management. After hearing the parties, this Court made the following order on September 8, 1958, in the stay matter :

"

Interim order is made absolute until the disposal of Article 32 Petition which is fixed for final disposal on 23rd September 1958 subject to part heard.

"

4. Several affidavits have been filed on each side. On behalf of the respondents, the 4th respondent, who is the Deputy Inspector of Schools, Chapra, swore the affidavit in opposition to the petitioners' allegations in their several affidavits. It is not necessary to set out the allegations made on behalf of the respondents in their affidavit relating to the part played by the first petitioner in founding and running the school, or to the proceedings taken against the Head Master, or to the many acts of mismanagement on the part of the Managing Committee, most of whom are petitioners in this case, because this Court is not concerned with the merits of those controversies. The only question directly before this Court, is whether the petitioners have made out any fundamental right which has been infringed or is threatened to be infringed by the respondents or any one of them.

5. At the outset, we must make it clear that we wish to say as little as we can, in disposing of this writ petition, in view of the fact that the Court has not been placed in possession of all the relevant facts of the case, or the rules and regulations relating to the constitution, duties and powers of the Managing Committee vis-a-vis the Education Department of the Government. Though the arguments at the bar have ranged over a large field, and covered questions which do not properly arise in a proceeding of the kind we have before us, we have to confine our observations to the main point in controversy, namely whether the petitioners have made out any fundamental right and any actual or threatened invasion of that right, entitling them to a writ under Art. 32 of the Constitution.

6. The learned counsel for the petitioners relied upon the following allegations made in para. 4 of their petition, in support of their contention that they had a right of property in the premises of the

school, which stand on the land purchased by them in the name of the Secretary of the Managing Committee :

"

The Managing Committee purchased several plots of land and the conveyances were taken in the name of the Secretary on behalf of the Managing committee and the said Committee built the School building on the said land and the said Committee was and is the owner of the School and of the land and buildings and was entitled to be in possession thereof.

"

The petition runs into as many as 38 paragraphs. Most of those paragraphs have been traversed in the affidavits filed on behalf of the respondents, either admitting or denying or partly admitting and partly denying, the allegations made on behalf of the petitioners. But curiously enough, the most important paragraph, namely, para. 4, quoted above has not been traversed or specifically denied on behalf of the respondents. The counsel for the respondents was not able to point out any allegations in their affidavits denying those allegations. It must, therefore, be taken, for the purposes of this case, that the fact is admitted on behalf of the respondents that the Managing Committee purchased the land, and constructed the building for the school on that land, and that the Committee is the proprietor of the building and the land on which the building stands. But it is a little difficult to appreciate in what way the Committee can claim to be the "owner of the School," apart from the land and the building. We must, therefore, proceed on the assumption that the petitioners are the proprietors of the land and the building of the school as trustees but certainly not as beneficial owners in the sense in which property ordinarily is owned and possessed-that was not even claimed on behalf of the petitioners. The petitioners are, therefore, entitled, on that assumption, to hold the land and the building of the school as trustees for the purposes of the school. It is also clear, on the affidavits, that the Education Department of the Bihar Government, purported to divert the petitioners of their character as trustees in respect of the land and the building of the school.

7. The next question, therefore, arises whether the respondents can deprive the petitioners of their proprietary rights a the properties aforesaid, and whether they have purported to do so by any process known to law. It is claimed on behalf of the respondents that due to the failure of the Managing Committee to carry out the directions of the Board of Secondary Education and the Government, the Board appointed an ad hoc Committee to take over the management of the school, and that this step was taken by the Government in accordance with the amended Art. 182 of the Code. Article 182 of the Code is headed "withdrawal or withholding of recognition," and runs as follows :

"

Recognition shall only be withdrawn or withheld for reasons to be recorded in writing and on one of the following grounds :

(a) that the school does not follow the course of study prescribed or approved by the department;

(b) that it has committed a willful breach of the transfer rules;

(c) that it has not attained or does not attain to a reasonable standard of efficiency :

(d) that it does not maintain a satisfactory standard of discipline, or employs any teacher who takes part in political agitation directed against the authority of Government or who endeavours to inculcate opinions tending to excite feelings of political disloyalty or disaffection among the pupils, or to create hatred between the different classes at His Majesty's subjects; or

(e) that it appears to the authority empowered to grant recognition for any other reason to be injurious to the interest of education.

NOTE. - These rules apply to such middle and primary schools (including primary Sanskrit schools and primary Urdu schools as are not under the control of district boards, the district committee in the Santal Parganas and special schools such as Sanskrit to is and madrasas. If recognition is refused to a school under the control of a municipality, a copy of the orders should be sent to the chairman of the municipality. The recognition of schools under the control of the district boards, the district committee in the Santal Parganas is governed by the statutory rules framed for those bodies.

"

The amendment relied upon in support of the Government's right to displace the Managing Committee, is Annexure 'B', and is in these terms :

"

Amendment :

Clause (e) will be renumbered as clause (f) and the following will be published in the place-

(e) The Managing Committee of the school is not functioning to a way conducive to the proper maintenance or discipline among the teachers and public and is not carrying out the directions of the Board and administering the finances of the school properly.

The following clause may be added after rule (f) :

For reasons specified in clause (e) the Board instead of withdrawing or withholding recognition may withdraw its approval of the constitution of the managing committee

and make such arrangement for the management of the school as it considers suitable pending reconstitution of the Managing Committee.

"

8. It is not necessary for us to pronounce upon the controversy raised on behalf of the petitioners, founded on the Note under the original Art. 182, that the rules contained in that article did not apply to High English Schools, like the one in question. We shall proceed on the assumption that Art. 182 of the Code, as amended, applied to the school in question. Nor have we thought it necessary to refer, in detail, to the decision of the Division Bench of the Patna High Court in *Bhim Chandra Mahto v. Deputy Director of Education (Secondary), Bihar*, (S) 1956 AIR(PAT) 81, because we are basing our judgment on the admissions made either in the pleadings or at the bar.

9. As already indicated, proceeding on the assumption that the land and the building of the school, are vested in the petitioners as the Managing Committee of the school, have the petitioners been divested of their rights by authority of law, under Art. 31 (1) of the Constitution? If the amended Art. 182 of the Code, extracted above, is law within the meaning of the article aforesaid of the Constitution, the petitioners cannot have any just complaint if they have been or are being deprived of those properties, because it is clear that the petitioners are holding the properties not in their individual absolute rights but only as trustees, for the purposes of the school. They have the properties vested in them because they are the Managing Committee. If they have been divested of those rights by the authority of law, this petition under Art. 32 of the Constitution must stand dismissed. If, on the other hand, the amended Art. 182 of the Education Code, is not law within the meaning of Art. 13 of the Constitution, then the petitioners cannot be deprived of their right to hold the properties as trustees, by a mere fiat of the officials of the Government of Bihar. Though, in the affidavits sworn on behalf of the respondents, it was claimed that the provisions of the Bihar Education Code, had the force of law, it has been conceded by the learned Solicitor-General, appearing on behalf of the respondents, that he could not justify that contention. The preface to the latest edition (7th Edition) printed in 1957, of the Bihar Education Code (1944), contains the following statement by the then Director of Public Instruction, Bihar :

"

The Bihar Education Code is compiled in the office of the Director of Public Instruction, Bihar, and is issued under his authority. Those articles, below which no. reference to higher authority is cited, have the same authority as circular and other orders of the Director.

"

It is clear, therefore, from the portion of the preface extracted above, that Art. 182 of the Code has no. greater sanction than an administrative order or rule, and is not based on any statutory authority or other authority which could give it the force of law. Naturally, therefore, the learned Solicitor General, with his usual fairness, conceded that the article relied upon by the respondents as having the force of law, has no. such force, and could not, therefore, deprive the petitioners of their

rights in the properties aforesaid.

10. The only other question which remains to be determined, is whether the petitioners have made out any grounds for interference by this Court with the orders passed by the respondents and impugned in this case. In para. 34 of the petition, it is stated that"

The petitioners further apprehend that if charge is not given over as requested in the said letter, possession will be taken by force with the aid of the police and local executive authorities.

"That this apprehension on the part of the petitioners is not a mere figment of imagination, is brought out by the following endorsement dated December 25, 1957, on the letter of that date, from the Inspector of Schools, Tirahut Division, to the Secretary, Board of Secondary Education, Bihar, which may better be reproduced in extenso :

"

From The Inspector of Schools, Tirahut Division.

To The Secretary, Board of Secondary Education Bihar, Patna.

Muzaffarpur, the 25th December, 1957.

Sub : Appeal case of Shri Sheo Kumar Mishra Sharma.

Sir, I am to refer you to letter No. 1245 dated the 22nd December 1957 from the District Inspector of Schools, Saran, regarding flouting of the Government orders by the authorities of the Parsa High School. Consequent upon this action of the Committee, it is dissolved and an ad hoc committee consisting of the following persons formed to look after the management of the school :

1. Circle Officer, Parsa President
2. Dy. Inspector of Schools, Sadar Chapra Secretary
3. Distt. Superintendent of Education, Saran Member It may be approved.

Yours faithfully, Sd./ . H. N. Chaudhary.

Inspector of Schools, Tirahut Division.

Memo. No. 4965 Muzaffarpur, the 25th December, 1957.

Copy forwarded to the District Inspector of Schools, Saran, Distt. Superintendent of Education, Saran, Dy Inspector of Schools, Sadar, Chapra and Circle Officer, Parsa, for information and guidance. They are requested to see that the Govt. order is implemented. The District Inspector of Schools, Saran will please take the help of local Executive, in case of necessity.

Sd./- Illegible. 25. 12 Inspector of Schools, Tirhut Divn."

11. The endorsement aforesaid to the District Inspector of Schools and other officers mentioned therein, shows that they were authorized by the Inspector of Schools to seek the aid of the local executive authorities in the event of the Managing Committee not making over complete charge of the School which, in the context, includes the buildings also. As no. legal justification is forthcoming on the side of the respondents for depriving the petitioners of their rights, whatever they are, in those properties, it follows that the petition has to be allowed, and the respondents have to be prohibited from interfering with the petitioners' properties aforesaid, except by authority of law. The respondents must pay the petitioners the costs of this petition. Senior counsel certified.