
(2004) 10 PAT CK 0035
In the Patna High Court
Case No : C.W.J.C. No. 13293 of 2003

Anil Kumar Roy Sharma

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Citation : (2004) 10 PAT CK 0035

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard Sri Rajendra Pd. Singh Senior Advocate for the petitioner and Sri Ashok Kumar Singh learned Standing Counsel III for the State.

2. Petitioner is the Secretary and teacher of Prabhat Education Centre Middle School Gurki Mandi Gulzarbagh, Patna. He has filed this writ application for direction to the respondent authorities to permit the class VIII students of the aforesaid middle school to appear in Class VIII Board examination conducted by the State Government. For similar relief he had filed CWJC No. 12946/02 which was disposed of under orders date 11.12.2002 as contained in Annexure-11 whereunder this Court directed the Commissioner-cum-Secretary, Secondary, Primary and Adult Education of the Department of the State Government to consider the request of the petitioner for the said purpose. Learned Secretary, Secondary, Primary and Adult Education Department has thereafter considered the request of the petitioner and has rejected the same under Order dated 20.5.2003 Annexure-1. Petitioner has also prayed for quashing of the aforesaid order dated 20.5.2003 Annexure-1. Before advertng to the aforesaid order dated 20.5.2003. I would mention a few facts. Petitioner established the aforesaid school on 6.11.1968 to cater to the primary educational needs of the adjoining area in which the said school was established. Under order contained in memo No. 1066 dated 31.12.1970 Sub-divisional Education Officer, Patna Sadar recognized the said school as Middle school, from Class I to Class VII with retrospective effect from 1.1.1970. Under office order bearing memo No. 856 dated 14.4.1989 Annexure-3. Headmistress of the said school was permitted to

establish Class VIII in the school. School authorities having established Class VIII in the said school have been admitting students in class VIII since 1990 and those students after completing class VIII studies are granted transfer certificate on which basis they are admitted for further studies in Class IX in Nationalised or Government recognized schools. Director Secondary and Primary Education in order to achieve the object of universalization of Primary education issued instruction contained in Memo No. 353 dated 24.11.2000 Annexure-4 drawing an action plan to achieve universalization of Primary education and directed all the District Education Officers/District Superintendent of Education, Subdivisional Education Officer to compulsorily conduct district level examination of Class VIII students of the Government school as also school recognized by the Government from December, 2000. Perusal of those instructions would indicate that Class VIII students of the private schools were never prohibited from appearing in the Class VIII Board examination conducted in the district. Under memo No. 2015 dated 27.11.2001 Annexure-9 Commissioner-cum-Secretary of the secondary, primary and Adult Education department of the State Government informed all the District Education Officer and District Superintendent of Education that the object behind holding Class VIII Board examination is to achieve meaningful universalization of education which can be achieved by ensuring maximum participation of the students in the said examination and accordingly directed them to ensure maximum participation of the students in Class VIII Board examination. Petitionary institution also desired that its Class VIII students should be permitted to appear in the aforesaid examination. In this connection various correspondences were exchanged between the school authorities and the authority of the Primary Education Directorate as also District Superintendent of Education, Patna and Subdivisional Education Officer, Patna. Reference whereof has been given in paragraphs 10 to 13 of the writ application. Perusal of those documents as referred to in aforesaid paragraphs as also appended to the writ application would indicate that the programme of the examination was published under letter No. 1450 dated 26.8.2002 (Annexure 5), under letter No. 3117 dated 14.9.2002 (Annexure-6) District Superintendent of Education Patna having forwarded the office copy of Memo No. 856 dated 14.4.1989 Annexure-3 which was preserved in his office requested the District Education Officer, Patna to undertake its (Memo No. 856 dated 14.4.1989) verification and thereafter further requested him to return the same. Under letter No. 37 dated 25.9.2002 (Annexure 7) the headmistress of the school informed the District Superintendent of Education, Patna that there are 120 students admitted in class VIII and they shall appear in the Class VIII Board examination scheduled to begin on 2.12.2002. Headmistress of the school under letter No. 38 dated 18.10.2002 Annexure-8 requested the Director Primary education that as verification report in regard to Memo No. 856 dated 14.4.1989 was still awaited Class VIII students of the school may be permitted to appear in Class VIII Board examination scheduled to begin with effect from 2.12.2002 in the light of the subsequent instructions of the Commissioner & Secretary of the Secondary, Primary and Adult education department bearing Memo No. 2015 dated

27.11.2001 Annexure-9 whereunder it was clarified that the object behind holding Class VIII Board examination is to secure maximum participation of the Class VIII students in the said examination, As the students of the school in question were not permitted to appear in Class VIM Board examination inspite of repeated request by the school authorities, petitioner being its Secretary filed CWJC No. 12946/02 before this Court praying inter alia that its students be permitted to appear in Class VIII Board examination scheduled to begin on 2.12.2002 as per programme dated 26.8,2002 {Annexure 5}. During the hearing of the writ petition State authorities filed counter affidavit stating inter alia that the school in question was established for Class I to VII after permission under office order bearing No. 1068 dated 13.12.1980 (Annexure-2). Permission to open Class VIII in the school under Memo No. 856 dated 14.4.1989 (Annexure-3) was never granted and instruction/order as contained in memo No. 856 dated 14.4.1989 (Annexure-3) is a forged document and in that view of the matter submitted the authorities that the students of Class VIM of the school in question cannot be allowed to .appear in the Board examination scheduled to begin on 2.12.2002.

3. This Court having appreciated the stand of the State respondents that they disputed the genuineness of the order contained in Memo No. 856 dated 14.4.1989 (Annexure-3) directed the Commissioner-cum-Secretary Secondary, Primary and Adult Education department, Respondent No. 2 to look into the matter and if necessary to get the signature of the author over the aforesaid memo verified by a handwriting expert and thereafter to consider and scrutinize all other records and documents maintained in the Department/Directorate regarding submission of the petitioner that the students of the said school had appeared in Class VIII examination held from 1989 till 2001 and come to a final conclusion and if it is found that Memo No. 856 dated 14.4.1989 was genuine then to permit the students of the institution to appear in the examination as also to hold special examination, if necessary. Relevant portion of the order passed by this Court is quoted hereinbelow :

"....., in the facts of this case, as the facts are otherwise of Annexure-2 has been respondent No. 2, the Commissioner-cum-Secretary, Secondary, Primary and Adult Education to look into the matter and if necessary get the aforesaid signature verified by handwriting expert, consider all the records and verify other documents regarding the submission of the petitioner that the students of the said school are appearing in Class VIII examination from 1989 till 2001 and the counter claim has been brought in Annexure C and come to a final conclusion and if it is found that the permission granted to the petitioner's students was genuine, he shall pass appropriate order so that the students of the institution do not suffer and if necessary special examination is held for those candidates they are allowed to appear in the next examination. This Court-hopes and trusts that as the matter relates to career of the student, the Commissioner-cum-Secretary, Secondary Primary and Adult Education (Respondent No. 2) should expedite the disposal of the same and in any view of the matter pass a

final order within a period of four months from the date of receipt/production of a copy of this order.

with the aforesaid observations/directions, this writ application is disposed of."

4. In compliance of the aforesaid order of this Court Secretary of the Secondary, Primary and Adult Education department issued notice to the parties concerned including the petitioner and the District Education Officer/District Superintendent of Education, Patna as also to Sri B.N. Sinha, the then District Education Officer who had signed and issued Memo No. 856 dated 14.4.1989 vide notice bearing No. 234/C dated 20.12.2002 (Annexure 12). In compliance of the aforesaid notice parties appeared and reiterated the same stand which they had taken in the writ petition bearing CWJC No. 12946/02 before this Court.

5. Learned Secretary of the department having heard the parties passed the order dated 20.5.2003 (Annexure-1) whereunder he noticed the submission of the two sides and thereafter with reference to paragraph 10 of the circular dated 24.11.2000 Annexure-4 held that Class VIII Board examination is meant for Government school or school recognised by the Government and Class VIII students of private schools does not suffer any disadvantage on account of nonappearance in the Board examination as they are allowed admission in Class IX in a Government school or a school recognized by the Government. Finding recorded by the learned Secretary in paragraph 6 of the order is quoted hereunder for ready reference :

"That the instructions nowhere prohibits or injuncts that student of the other category of schools not appearing at Class VIII examination should be debarred from admission to Class IX and further study para 10 of the said circular made - as follows-I

^^pwaFd v"Ve oxZ esa ijh{kk dk lapkyu ljdkjh fo|ky;ksa esa vk;ksftr fd;k tk;sxk vkSj blh ds vk/kkj ij fo|kfFkZ;ksa dks oxZ oue esa izkUur fd;k tk;sxk] vr% futh fo|ky;ksa ;k mDr dksfV ds fo|ky;ksa ds vfrfjDr fo|ky;ksa ls oxZ v"Ve dh ijh{kk nsdj m?kh.kZ fo|kfFkZ;ksa ds oxZ oue esa jktdh; @ jktdh;d`r mPp fo|ky; esa izos"k ij fdLh rjg dh dksbZ jksd ugha gksxhA vFkkZr futh fo|ky;ksa ds fo|kfFkZ Hkh jktdh; @ jktdh;d`r mPp fo|ky;ksa esa oue oxZ esa iwoZ ls py jgh izf?;k ds vuqLkj izos"k ik ldrs gSaA**

6. With reference to Departmental Letter No. 2501 dated 31.12.1982 learned Secretary held that the institution in question has no infrastructure to carry on primary teaching in the school and more over the order whereunder school in question has been granted recognition being a forged one it is not necessary to get the signature verified by a handwriting expert. For ready reference paragraph 7 of the order of learned Secretary is quoted hereunder:

"Departmental Letter No. 2501 dated 31.12.1982 lays down the conditions for establishment and recognised of private elementary schools. The petitioner has not submitted any paper and documents with regard to land, Building, Teacher,

Students Security Fund, Furniture, Library and Curriculum etc. The then DEO Patna has brought on record through counter affidavits that the so-called order of grant of recognition of Prabhat Education Center Middle School Gulzarbagh, Patna is a forged document. From the records available and from the reports submitted by the District level officers the undersigned of review the school in question is not a recognised school and therefore it is not necessary to get the signature verified by handwriting expert."

7. By filing this writ petition petitioner has prayed for quashing inter alia the order passed by the learned Secretary dated 20.5.2003 (Annexure-1) and thereafter to direct the authorities of the State Government to permit Class VIII students of the school in question to appear in Class VIII Board examination conducted every year by the District Education Officer/District Superintendent of Education, Patna in terms of the instruction of the Director Secondary, Primary Education as contained in Memo No. 353 dated 20.11.2000 (Annexure-4).

8. Sri Rajendra Pd. Singh Sr. Advocate appearing for the petitioner has reiterated the same submission which was made during hearing of CWJC No. 12946/02 and has further submitted that the finding of the learned Secretary recorded in paragraphs 6 of the aforesaid order that Class VIII Board examination is only meant for the students of the Government school or the school recognized by the Government and students of private school on account of non-appearance in Class VIII Board examination does not suffer any disadvantage as they are allowed admission in Class IX in Government school or school recognized by the Government without appearing in Class VIII Board examination is directly in teeth of fundamental right enshrined in Article 21A of the Constitution of India which mandate that the State shall provide free education to all children of the age of 6 to 14 years in such manner as the State may by law determine. In this connection he also referred to observation of the Hon"ble Supreme Court in the case of Unni Krishnan J.P. and Ors. v. State of Andhra Pradesh and Ors., reported in, 1993 SC 2178, wherein before the insertion of Article 21A in the Constitution of India, the Supreme Court observed as follows :

109. On the first question, the Bench held, on a consideration of Article 21, 38, 39(a) and (f), 41 and 45 of the Constitution :

(a).....

(b).....

(c).....

(d).....

(e).....

(f).....

(g) "We hold that every citizen has a "right to education" under the Constitution, The State is under an obligation to establish educational institutions to enable

the citizens to enjoy the said right. The State may discharge its obligation through State owned or State-recognised education institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfil its obligations under the Constitution. The students are given admission to the educational institutions-whether State- owned or State recognised in recognition of their right to education" under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution."

146. This does not however mean that this obligation can be performed only through the State schools. It can also be done by permitting, recognising and aiding voluntary non- Governmental organisations, who are prepared to impart free education to children. This does not also mean that unaided private schools cannot continue. They can, indeed, they too have a role to play. They meet the demand of that segment of population who may not wish to have their children educated in State-run schools.

9. In this connection he also referred to the instruction of the Commissioner-cum-Secretary, Primary, and Adult Education contained in Memo No. 2015 dated 27.11.2001 (Annexure-9) whereunder in regard to class VIII Board examination it was observed that the authorities should ensure maximum participation of the students in Class VIII Board examination. With reference to the said instructions Sri Singh submitted that for achieving universalization of education instructions have been issued to the subordinate education officials of the department to ensure maximum participation of students in the Class VIII Board examination and to achieve the same students of the school in question should be permitted to appear in the Class VIII Board examination.

10. Shri Singh further submitted that the petitioner institution was permitted to establish the school for Class I to VII with effect from 1.1.1970 under Office Order No. 1066 dated 31.12.1970 issued by the Subdivisional Education Officer, Patna as contained in Annexure-2. The said permission has not been revoked till date. The authorities neither in this proceeding nor during the hearing of the earlier writ proceeding ever questioned the genuineness of the said office order by challenging the same. He further contended that in the earlier writ proceeding authorities challenged the genuineness of Memo No. 856 dated 14.4.1989 Annexure-3 and genuineness of the said document for the first time was questioned by the District Superintendent of Education under Letter No. 3117 dated 14.9.2002 (Annexure-6) when office copy of the said Memo No. 856 dated 14.4.1989 which was preserved/available in the office of the District Superintendent of Education Patna was forwarded to the District Education Officer Patna for verification of its genuineness. With reference to the said letter Sri Singh submitted that office copy of Memo No. 856 dated 14.4.1989 which was also marked to the District Superintendent of Education, Patna was preserved and available in the office of the District Superintendent of Education, Patna and has been forwarded to the office of the District Education Officer Patna in original

for verification could not be a forged document as the official copy of the said memo marked to the District Superintendent of Education, Patna was available in the office of the District Superintendent of Education, Patna and was forwarded to the District Education Officer under Letter No. 3117 dated 14.9.2002 Annexure-6 as such could not be a forged document. He further submitted that in any view of the matter the Secretary of the department was obliged to have got the signature of the author over Memo No. 856 dated 14.4.1989 verified by a handwriting expert as was directed by this Court in the earlier round of litigation vide order dated 11.12.2002 (Annexure 11). In this connection he also submitted that the permission to establish the petitioner institution was allowed by the Subdivisional Education Officer, Patna under Office Order No. 1066 dated 31.12.1970. Before Issue of the aforesaid order infrastructure of the school was verified and when authorities were satisfied then only said office order was issued and as such learned Secretary is not justified to question the infrastructure available in the school with reference to the subsequent departmental letter No. 2501 dated 31.12.1982 as it is well established that executive instructions can not be applied with retrospective effect. In the light of the aforesaid submissions, learned counsel submitted that the order dated 20.5.2003 Annexure-1 passed by the learned Secretary is not in accordance with law and should be quashed.

11. On the other hand, Sri Ashok Kr. Singh learned SCIII submitted that Memo No. 856 dated 14.4.1989 (Annexure-3) whereunder petitioner institution claims that it has been granted permission to establish Class VIII being forged this writ petition should be dismissed and in any case in terms of the instruction of the Director Secondary and Primary Education contained in memo No. 353 dated 24.11.2000 (Annexure-4) students of Government school, Government aided school or schools recognized by the Government can only be permitted to appear in the examination and in this connection he referred to paragraph 2 of the said memo. He further relied upon judgment of the Hon''ble Supreme Court in case of Mrs. Rena Drego Vs. Lalchand Soni, Etc., : In the Matter of the Appropriate Authority and Another Vs. Smt. Sudha Patil and Another, , to submit that writ jurisdiction of this Court should not be exercised to permit the students of private school to appear in Class VIII Board examination as in terms of the instructions of the Director dated 27.11.2000 Annexure-4 only the students of the Government school and school recognized by the Government are permitted to appear in the Class VIII Board examination. I have perused the three judgments in the first of the three cases namely Rena Drego (Mrs.) v. Lalchand Soni and Ors., Hon''ble Supreme Court with reference to Article 227 of the Constitution observed as follows :

Para-4. According to us, the High Court has traversed far beyond the limit of its supervisory jurisdiction under Article 227 of the Constitution when the learned Single Judge reversed the decree of eviction which was based on findings of facts arrived at by the fact-finding authority upon the evidence on record. It would have been well for the High Court to remind itself that it was not exercising

certiorari jurisdiction under Article 226 of the Constitution but a supervisory jurisdiction under Article 227 which obliges the High Court to confine to the scrutiny of records and proceedings of the Tribunal. By relying on fresh material which were not before the Tribunal, the High Court should not have disturbed findings of facts in exercise of such supervisory jurisdiction. It is now wellnigh settled that power under Article 227 is one of judicial superintendence which cannot be used to upset conclusions of facts, however erroneous those may be, unless such conclusions are to perverse or so unreasonable that no Court could ever have reached them. Way back in 1954, a Constitution Bench of this Court, in *Waryam Singh v. Amarnath* has pointed out that the power of Superintendence conferred by Article 227 should be exercised.

"most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

12. Perusal of the aforesaid quotation relied upon by learned counsel for the State would indicate that the Hon"ble Supreme Court in the aforesaid case has considered the scope of powers under Article 227 of the Constitution and has held the powers under Article 227 being supervisory should not be exercised for correcting mere errors of facts, said power should be exercised only to keep the Subordinate Tribunal within the bounds of its authority. Having held as above Hon"ble Supreme Court in the said case restored the eviction decree set aside by the High Court. In the case of *State of West Bengal and Ors. v. Nooruddin Mallick supra* it was held in the special facts of that case that decision should be taken by the authority which is empowered to take the decision and to avoid another round of litigation matter should be kept pending. In the third case relied by learned State counsel namely *Appropriate Authority v. Sudha Patil supra*, Hon"ble Supreme Court with reference to Article 226 of the Constitution, held in a matter arising out of the order passed by the Income Tax Tribunal, that while examining the decision of the inferior Tribunal finding/conclusion can be interfered if the High Court comes to the conclusion that the Tribunal has failed to consider some relevant material or has considered some irrelevant material or that finding is based on no evidence or finding is such that no reasonable man can come to such conclusion.

13. Having heard the two sides and having considered the case law relied by them, I am of the view that the observations of the learned Secretary, Secondary, Primary and Adult Education Department in para 6 of the impugned order that the students of the petitioner institution even if they are not permitted to appear in the Class VIII Board examination, are not at any disadvantage, as they are always entitled for admission in any Government/non-Government school in Class IX on the basis of transfer certificate granted by the school in question is in teeth of the rights of a student below 14 years enshrined in Article 21A of the Constitution as in my opinion right to appear in Class VIII Board examination is another facet of right to education guaranteed under Article 21A of the Constitution. If the students of any school be it private or Government,

desires to appear in Class VIII Board examination for the appraisal of the faculties acquired by students pursuant to the studies undertaken in a school, the authorities of the State" Conducting Class VIII Board Examination are obliged to permit those students to appear in Class VIII Board examination, failing which action of State authorities shall be arbitrary and violative of Article 14 of the Constitution as Article 21A of the Constitution guarantees free and compulsory education to all children upto the age of 14 years and does not make any distinction between the students of private institution and Government institution. Right to appear in Class VIII Board Examination is a necessary concomitant of right to education guaranteed under Article 21A of the Constitution. Without opportunity to appear in examination it is difficult to visualize any meaningful education. Purposeful universalization of education shall also be better achieved if the students of private schools are also allowed to appear in Class VIII Board Examination so as to indicate the level of education achieved by them. Cost of the examination should, however, be borne by the institution in which students have studied for Class VIII as private institutions also have to play a role in achieving universalization of primary education enshrined under Article 21A of the Constitution as was observed by the Hon"ble Supreme Court in the case of. Unni Krishnan J.P and Ors. v. State of A.P. and Ors., (supra) even before right to education was inserted under Article 21A of the Constitution.

14. The Secretary, Secondary, Primary and Adult Education, before passing the impugned order dated 20.5.2003, was obliged to refer memo No. 856 dated 14.4.1989, Annexure-3 to a handwriting expert as was directed by this Court under order dated 11.12.2002 (Annexure-11) as he has not followed the affection of this Court and has passed the impugned order dated 20.5.2003 (without making reference of the aforesaid memo to the handwriting expert) holding that recognition granted by the then District Education Officer under Memo No. 856 dated 14.4.1989, Annexure-3 is forged, said finding, in my opinion, is nothing but conjecture and deserves to be set aside and is accordingly set aside.

15. The finding that the school has no infrastructure also appear to be vitiated as the said finding has been arrived at with reference to the departmental letter dated 13.12.1982 even though school in question was established upto Class VII under Letter No. 1066 dated 31.1970 (Annexure-2) and any subsequent instruction of the State Government in regard to the infrastructure of Primary school, namely, departmental letter dated 13.12.1982 cannot be a relevant instruction for considering the infrastructure of the school which was available before 31.12.1970 as such the finding recorded in the impugned order that school has no infrastructure is based on material which was irrelevant for recording the said finding and as such is accordingly set aside.

16. In view of the findings above, order passed by the Secretary dated 25.3.2003, Annexure-1, is quashed with direction to the respondents to permit

the Class VIII students of the school in question to appear in Class VIII Board Examination. This application is, accordingly, allowed. No costs.