
(2004) 11 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 11626 of 2003

Awadh Bihari Singh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 22-11-2004

Acts Referred:

Citation : (2005) 1 BLJR 231 : (2005) 1 PLJR 549

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard.

2. Petitioner, who is the Secretary of Shri Sitaram Middle School, Pakaria Circle Dihri-II, District-Rohtas, has filed this writ application assailing the order dated 23.7.2003 bearing Memo No. 1003 dated 26.7.2003, Annexure-28, whereunder the Director, Primary Education, has rejected the request of the petitioner to take over the aforesaid institution under the provisions of Bihar Non Govt. Elementary School (Taking, over of Control) Act, 1976 hereinafter referred to as the Act.

3. Dr. S.N. Jha, Senior Advocate, appearing for the petitioner stated that petitioner's institution was taken over under the aforesaid Act under the orders of the Regional Deputy Director of Education, Patna Division, Patna bearing Letter No. 1716-19 dated 19.2.1977, Annexure-5. He further stated that Kasturba Middle School, Piparpatti, Buxar, was also taken over under the aforesaid Act under the orders of the Regional Deputy Director of Education, Patna Division, Patna, bearing Letter No. 15360-63, Annexure-B to the counter affidavit. Under letter dated 17.6.1977 of the Director, Primary Education, Bihar addressed to the Regional Deputy Director of Education, Patna Division, Patna, the take over of the petitioner's institution as also similar other institution including Kasturba Middle School, Piparpatti, Buxar, granted under the order of the Regional Deputy Director of Education, Patna Division, Patna, was stayed.

Under order bearing Memo No. 9419 dated 30.3.1979, Annexure-10, Director, Primary Education, Bihar vacated the stay of take over of Kasturba Middle School, Piparpati, Buxar. Perusal of the aforesaid order of the Director, Primary Education, dated 30.3.1979 would indicate that the stay in regard to Kasturba Middle School, Piparpati, Buxar, was vacated with reference to a Government order. Details whereof was, however, not indicated in the said order. Stay of take over of the petitioner and other similar institutions was not vacated and petitioner continued to agitate the matter before the authorities. When the effort of the petitioner to secure the take over of its institution could not succeed before the authorities as the stay of its take over was never vacated he filed writ application bearing C.W.J.C. No. 10062/1998. During the pendency of the said writ application State-respondent No. 2 filed his counter affidavit contending that question of take over of the petitioner's institution is under active consideration before the concerned department of the State Government. This Court under order dated 21.7.1999, Annexure-25, disposed of the said writ application directing Director, Primary Education, to take a final decision in accordance with law without any further delay and dispose of the matter by a reasoned order. In compliance of the aforesaid order dated 21.7.1999 the Director, Primary Education, has passed the impugned order dated 23.7.2003, as contained in Memo No. 1003 dated 26.7.2003, Annexure-28, whereunder he has rejected the claim of the petitioner's institution for taking over on two grounds, namely, that the State Government has already taken a decision dated 30.3.1979 that no private institution managed by the Managing Committee shall be taken over hereinafter. As regards the earlier take over of the petitioner's institution vide Memo No. 1716-19 dated 19.2.1977, Annexure-5, Director, Primary Education, observed that the said take over was not in accordance with the provisions of the Act, as the aforesaid order dated 19.2.1977, was issued by an authority who was not vested with the powers to pass orders for taking over of any institution under the provisions of the aforesaid Act. Appreciating this aspect of the matter the earlier order taking over the institution was stayed by the Director, Primary Education, under order dated 17.6.1977, Annexure-7.

4. Dr. Jha, assailed the aforesaid impugned order on the ground that the petitioner's institution and Kasturba Middle School, Piparpati, Buxar, stands on similar footing as both were initially taken over under the order of the Regional Deputy Director of Education, Patna Division, Patna, and the take over of both the institution was stayed by the Director, Primary Education, Bihar, Patna, under order dated 17.6.1977, but thereafter petitioner's institution was discriminated vis-a-vis Kasturba Middle School, Piparpati, Buxar, in whose case the stay of take over was vacated under order bearing Memo No. 9419 dated 30.3.1979, Annexure-10, but stay of petitioner's institution was continued and as the two schools stand on similar footing stay of take over of petitioner's institution should be vacated by this Court as the authorities are not prepared to do so and have refused the prayer under the impugned order on the ground of subsequent Cabinet decision and the fact that the initial take over under order dated

19.2.1977, Annexure-5, was not by the competent authority. He, in this connection, asserted that case of the petitioner's institution being similar to that of Kasturba Middle School similar order should be passed in the case of the petitioner's institution as well.

5. Perusal of the order vacating the stay of take over of Kasturba Middle School dated 30.3.1979, Annexure-10, indicates that the stay of take over of Kasturba Middle School, Piparpati, Buxar, was vacated with reference to a Government order, details whereof was not indicated in the said memo dated 30.3.1979. In spite of two adjournments granted under order dated 8.9.2004 and 27.9.2004 to the respondent-State authorities to trace the Government order referred to in the order bearing Memo No. 9419 dated 30.3.1979 the same could not be traced as it appears from the supplementary-counter affidavit filed today by the State-respondents.

6. Having heard the learned counsel appearing on behalf of the parties, I am of the view that the impugned order refusing to take the petitioner's institution cannot be held to be contrary to the provisions of law as the same has been passed taking into account the subsequent Cabinet decision and the fact that the initial order of take over of the petitioner's institution dated 19.2.1977, Annexure-5, was not issued by the competent authority. Illegalities made in the case of Kasturba Middle School cannot be a ground to direct the authorities to commit the same illegality in the case of the petitioner's institution. However, before parting with the case I must observe that the stay of take over of Kasturba Middle School was vacated under order bearing Memo No. 9419 dated 30.3.1979, Annexure-10, with reference to Government order. Details whereof has not been indicated in the said order and in spite of two adjournments allowed to the authorities to trace the same the said order has not been traced and placed before this Court, as such, I direct the authorities to first trace the Government order referred, to in the order dated 30.3.1979, Annexure-10, and in the event the same is not found within a reasonable period they should initiate appropriate action in accordance with law.

7. This application is, accordingly, dismissed with aforesaid observation. No cost.