

(2018) 10 PAT CK 0035

In the Patna High Court

Case No : Letters Patent Appeal No.921, 1252 of 2018 In Civil Writ Jurisdiction
Case No.8258, 8258 of 2017

Bihar Rajya Arya Pratinidhi Sabha @APPELLANT@Hash State of Bihar

Date of Decision : 12-10-2018

Acts Referred:

Constitution of India, 1950 — Article 30, 226

Citation : (2018) 10 PAT CK 0035

Hon'ble Judges : Mukesh R. Shah, CJ; Ashutosh Kumar, J

Bench : Division Bench

Advocate : P. K. Shahi, Rajeev Lochan, Ashutosh Ranjan Pandey, Y. V. Giri,
Pranav Kumar, Y. V. Giri, Pranav Kumar, Ashutosh Ranjan Pandey, Rajeev Lochan

Final Decision : Dismissed

Judgement

1. As common question of law and facts arise and asvsuch arise out of the impugned judgment and order passed by the learned Single Judge dated

22.06.2018, passed in CWJC No.8258 of 2017, both these appeals are heard, decided and disposed of together by the common judgment and order.

1.1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge dated 22.06.2018, passed in CWJC

No.8258 of 2017, insofar as challenging the directions issued by the learned Single Judge, contained in paragraph 31 of the impugned judgment and

order, the original writ petitioners as well as the contesting private respondent nos.4 and 5 have preferred the present Letters Patent Appeal Nos.921

of 2018 and 1252 of 2018. At this stage, it is required to be noted that Letters Patent Appeal No.921 of 2018 has been preferred by the original writ

petitioners and LPA No.1252 of 2018 has been preferred by the original respondent Nos.4 and 5.

2. The facts leading to the present Letters Patent Appeals, in nutshell, are as

under:-

2.1. That the dispute is with respect to administration and management of Bihar Rajya Arya Pratinidhi Sabha, Patna. It is required to be noted that

number of Court proceedings are pending in the Patna Civil Court as well as Delhi Court and even some FIRs are also reported to be filed. It is

required to be noted that the Bihar Rajya Arya Pratinidhi Sabha (hereinafter referred to as the "BRAPS"), Patna is a minority institution. That

earlier the Director (Secondary Education), Education Department, Government of Bihar, Patna passed an order dated 17.02.2016 and vide the said

letter, it was communicated to all the District Education Officers that the management of the minority schools being run under the BRAPS, constituted

by a committee headed by Sri Ganga Prasad of BRAPS, shall only be recognized. Thereafter, vide order dated 10th June, 2016, the communication

dated 17.02.2016 came to be cancelled by the Director (Secondary Education) Education Department, Government of Bihar, Patna. That the present

appellants-original petitioners of CWJC No.8258 of 2017 challenged the communication/order dated 10th June, 2016 cancelling the earlier

communication/memo/order dated 17.02.2016 by way of CWJC No.9841 of 2016.

That by judgment and order dated 06.02.2016, the learned Single Judge allowed the said writ petition and quashed and set aside the

communication/order dated 10th June, 2016. However, observed that the State authorities are given freedom to take a fresh decision in accordance

with law. That thereafter, by order dated 29.05.2017, the Director (Secondary Education), Education Department, Government of Bihar, Patna,

cancelled the earlier order/communication dated 17th February, 2016 by which the Director (Secondary Education) Education Department,

Government of Bihar, Patna communicated to all the District Education Officers that the Management of the minority schools being run under

BRAPS, constituted by a committee headed by Sri Ganga Prasad of BRAPS, shall only be recognized, observing that the BRAPS and the institutions

run by BRAPS are minority institutions and in the matter of constitution of Managing Committee of the minority institutions, the State cannot interfere.

2.2. Feeling aggrieved and dissatisfied with the communication/order dated 29.05.2017 of the Director (Secondary Education), Education Department,

Government of Bihar, Patna, cancelling its earlier communication/letter dated

17.02.2016, the original writ petitioners approached this Court by way of CWJC No.8258 of 2017. Before the learned Single Judge, the original writ petitioners prayed for the following reliefs:-

I. For issuance of an appropriate writ in the nature of Certiorari, quashing & setting aside the office order communicated vide memo no.-547 dated

29.05.2017, issued by the respondent no.02 whereby the earlier departmental letter issued by the respondent no.-02 contained in memo no.-156 dated

17.02.2016 has been cancelled with immediate effect without allowing any opportunity of hearing to the petitioner no.02 as also in complete violation

of directions & observations contained in order dated 06.12.2016 passed in CWJC No.9841 of 2016.

II. For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the respondent authorities not to give effect to the office

order contained in no.547 dated 29.05.2017.

III. For issuance of an appropriate writ in the nature of Mandamus, commanding & directing the respondent authorities to render full cooperation &

assistance in administration & management of the educational institutions run under the petitioner no.01 by protecting any outside interference.

IV. For issuance of any other appropriate writ/writs, order/orders, direction/directions, for which the petitioners may be found entitled under the facts

& circumstances of the case.â??

2.3. By the impugned judgment and order, the learned Single Judge has dismissed the said writ petition granting liberty to the parties to ventilate their

grievances before a competent Court of Civil Jurisdiction in the pending proceedings or otherwise. However, while disposing of the writ petition, the

learned Single Judge after considering various provisions of the Bihar School Examination Board (Secondary Education) Affiliation Regulation, 2001

(hereinafter referred to as the â??Regulation, 2001â??), more particularly, Regulation 17A and 17B of the Regulation, 2001, has issued the following

directions contained in paragraph-31 of the impugned judgment and order, which read as under:-

â??31 (i). Let Chairman Bihar School Examination Board, constitute managing Committees of the Schools run by BRAPS in the State of Bihar by

appointing convenors of the respective Schools, who shall take steps for election/selection of other members as stipulated under Regulation 17B of the

Regulations.

(ii). The District Education Officer of the concerned district shall be preferably appointed as the convenor, who shall be responsible for managing the

entire affairs of the School and will play the role which the society/trust running the School is required to play, in terms of Regulation 16.

(iii). The senior most teacher in the School will be assigned the job of the Principal of the School, who shall be required to discharge his duties as the head of the School.

(iv). In the peculiar facts and circumstances of the present case, I direct the Bihar School Examination Board, to constitute an ad hoc governing body

of the Schools under Regulation 17A of the Regulation by nominating Principal of nearest constituent college, as the President of the governing body

and; other members as contemplated under Regulation 17A. Till constitution of the full governing body as contemplated under Regulation 17A, the

body consisting of (a) the Principal of nearest constituent college as indicated, (b) the Principal of the respective School (as member Secretary) and

one member nominated by the Bihar School Examination Board shall discharge all the functions of the governing body.

(v). I direct specifically that no body or person other than the governing body and the managing Committee constituted under the present order of this

Court shall interfere with the functioning of the School.

(vi). The District Education Officer, being senior officer at the district level shall ensure the smooth functioning of the respective schools.

(vii). The District Education Officer acting as the President of the managing Committee of the School and the Principal of nearest constituent college

as the President of the governing body shall take all steps to ensure a transparent financial management of the School, in question, and shall ensure

maintenance of account of all the proceeds.

(viii). The management of all the Schools shall be under the direct control and over all supervision of a senior officer of the State Government or Bihar

Education Project Council to be nominated as Nodal Officer by the Principal Secretary, Education Department, Government of Bihar, who shall be

competent to issue necessary guidelines and directions for the smooth functioning and management of the Schools with the sole objective of providing

quality education to the children and make the institutions a center for

educational excellence.

(ix). The governing body/managing Committee of the institutes shall take prior permission of the Nodal Officer to be nominated by the Principal

Secretary, Education Department, Government of Bihar, for any expenditure beyond the sum of Rs. 5,00,000/-.

(x). No appointment against any teaching or non teaching posts shall made in the Schools without prior permission of the Nodal Officer.â??

2.4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge insofar as issuing the aforesaid

directions, contained in paragraph 31, both, the original writ petitioners as well as private respondent Nos.4 and 5 have preferred the present Letters

Patent Appeals.

3. Sri P.K. Shahi, learned Senior Advocate, has appeared on behalf of the original petitioners and Sri Y. V. Giri, learned Senior Advocate, has

appeared on behalf of the original private respondent Nos.4 and 5.

4. At this stage, it is required to be noted that the original writ petition was filed by the Bihar Rajya Arya Pratinidhi Sabha through its President Sri

Ganga Prasad. However, in view of the changed circumstances and it is reported that he has been appointed as the Governor, a substitution

application was preferred and One Sri Sanjeev Chaurasia has been permitted to be substituted as appellant in LPA No.921 of 2018.

5. Sri P. K. Shahi, learned Senior Advocate, appearing on behalf of the appellants of LPA No.921 of 2018 has stated at the Bar that the appellants

and the original writ petitioners do not challenge the impugned judgment and order passed by the learned Single Judge in dismissing the writ petition

and confirming the subsequent order dated 29.05.2017 of the Director (Secondary Education), Education Department, Government of Bihar, Patna

cancelling/recalling its earlier letter dated 17.02.2016 and has stated at the Bar that the appellants are challenging that part of the impugned judgment

and order passed by the learned Single Judge issuing further directions, contained in paragraph 31 of the impugned judgment and order. At this stage, it

is required to be noted that even the original private respondent nos.4 and 5 are also aggrieved by the directions issued by the learned Single Judge in

the impugned judgment and order, contained in paragraph 31. Thus, both the original writ petitioners as well as the original private respondent nos. 4

and 5 are aggrieved by the directions issued by the learned Single Judge in the impugned judgment and order, contained in paragraph 31.

5.1. Learned Senior Counsel appearing on behalf of the respective appellants have vehemently submitted that once the learned Single Judge dismissed

the main writ petition and did not interfere with the order dated 29.05.2017 passed by the Director (Secondary Education), Education Department,

Government of Bihar, Patna, thereafter, it was not open for the learned Single Judge to issue further directions, which ultimately would affect the

administration and management of the minority institutions run by BRAPS.

5.2. It is further submitted by the learned Senior Counsel appearing on behalf of the respective appellants that it is an admitted position that the

institution run by the BRAPS are minority institutions and, therefore, neither the State nor anybody can interfere with the internal administration and

management of the minority institutions. It is submitted that as such on the aforesaid premise, the Director passed an order dated 29.05.2017 observing

that in the present case, the State has no authority to interfere with the administration and management of the minority institutions run by BRAPS.

5.3. Sri P. K. Shahi, learned Senior Counsel, appearing on behalf of the appellants of LPA No.921 of 2018 has heavily relied upon the decision of the

Division Bench of this Court in the case of Milli Trust at Stadium Road Versus The State of Bihar, reported in 2016 (4) PLJR 853, in support of his

above submission.

5.4. It is vehemently submitted by the learned Senior Counsel, appearing on behalf of the respective appellants that therefore, the learned Single Judge

has materially erred in issuing the directions, contained in paragraph 31, more particularly, relying upon the Regulation 17B of the Regulation, 2001.

5.5. It is further submitted by learned Senior Counsel appearing on behalf of the respective appellants that therefore, the learned Single Judge has

issued the directions contained in paragraph 31 of the impugned judgment and order beyond the scope and ambit of the main writ petition and,

therefore, has exceeded in its jurisdiction in issuing the directions contained in paragraph 31. It is submitted that once the writ petition came to be

dismissed confirming the order passed by the Director (Secondary Education), Education Department, Government of Bihar, Patna, dated 29.05.2017

and as the dispute is with respect to internal administration and management of

the minority institutions, thereafter, the learned Single Judge ought to have left the parties to take recourse to law and ought to have left the matter there and ought not to have issued the further directions contained in paragraph 31, which ultimately is connected with the administration and management of the minority institutions.

5.6. Sri P. K. Shahi, learned Senior Counsel, appearing on behalf of the appellants of LPA No.921 of 2018 has stated that the appellant is in

administration and management of the minority institutions run by BRAPS. Per contra, it is submitted by Sri Y. V. Giri, learned Senior Counsel,

appearing on behalf of the appellants of LPA No.1252 of 2018 that they are in administration and management of the minority institutions run by

BRAPS. Thus, as such there are disputed questions of fact that who is in actual administration and management of minority institutions run by

BRAPS and who is in administration and management of BRAPS. At this stage, it is required to be noted that number of proceedings are pending in

the Patna Civil Court as well as Delhi Court. It is reported that few FIRs have also been filed.

6. Be that as it may, the only question which is required to be considered in the present Letters Patent Appeals is whether in the facts and

circumstances of the case, the learned Single Judge is justified in issuing directions contained in paragraph 31 of the impugned judgment and order,

more particularly, when the learned Single Judge as such has dismissed the main writ petition in which basically and primarily the original writ

petitioners challenged the order passed by the Director (Secondary Education), Education Department, Government of Bihar, Patna dated 29.05.2017

by which the Director (Secondary Education), Education, Department, Government of Bihar, Patna, recalled/cancelled its earlier communication dated

17.02.2016.

7. Heard learned Senior Counsel appearing on behalf of the respective parties.

7.1. At the outset, it is required to be noted that what was challenged before the learned Single Judge basically was the order passed by the Director

(Secondary Education) Education Department, Government of Bihar, Patna dated 29.05.2017 by which the Director (Secondary Education),

Education Department, Government of Bihar, Patna, recalled/cancelled its earlier order dated 17.02.2016 on the ground that being a minority

institutions, the State Government cannot issue any direction with respect to the administration and management. The same came to be challenged by

the original writ petitioners and one another relief was prayed for permitting the original petitioners to continue with the administration and

management, which was seriously disputed by the original respondent nos.4 and 5. The learned Single Judge dismissed the writ petition and did not

interfere with the order passed by the Director (Secondary Education), Education Department, Government of Bihar, Patna dated 29.05.2017 and also

did not grant any relief on the ground that there are disputed questions of fact. Once the writ petition came to be dismissed, thereafter, the learned

Single Judge is not justified in issuing further directions contained in paragraph 31 of the impugned judgment and order, which as such, is with respect

to the administration and management of the minority institutions run by BRAPS and related to the minority institutions of BRAPS.

7.2. As per catena of decisions of the Honâ??ble Supreme Court which as such came to be considered by the Division Bench of this Court in the

case of Milli Trust (supra), the minority institutions have the fundamental right under Article 30 of the Constitution of India of administration and

management and the minority institutions have the right to establish and administer, which as per the decision of the Honâ??ble Supreme Court in the

case of T.M.A. Pai Foundation Vs. State of Karnataka, reported in (2002) 8 SCC 481, includesâ?? to constitute a Governing body.

Therefore, no direction could have been issued by the High Court in connection with administration and management of the minority institutions even

under Article 226 of the Constitution of India.

7.3. It appears that by issuing directions contained in paragraph 31 of the impugned judgment and order, the learned Single Judge has considered the

Regulation 17A and 17B of the Regulation, 2001. There can be serious dispute with respect to applicability of the Regulation 17 and 17A of the

Regulations, 2001 in respect of the minority institutions. However, keeping that aside and as observed hereinabove and as the learned Single Judge has

as such dismissed the writ petition confirming the order passed by the Director (Secondary Education), Education Department, Government of Bihar,

Patna dated 29.05.2017 by which the Director recalled/cancelled its earlier communication/order dated 17.02.2016 on the ground that the State

Government cannot interfere in the administration and management of the minority institution (which was passed after relying upon the decision of the Honâ??ble Supreme Court), thereafter, the learned Single Judge ought to have rested the matter there and ought not to have issued the further

directions, contained in paragraph 31 which relates to administration and management of the minority institutions. As such it can be said that the learned Single Judge while issuing the directions contained in paragraph 31 of the impugned judgment and order, has gone beyond the reliefs sought in the main writ petition and beyond the scope and ambit of main writ petition.

Under the circumstances, the impugned judgment and order passed by the learned Single Judge insofar as issuing the further directions, contained in paragraph 31, cannot be sustained and the same deserve to be quashed and set aside.

8. Now, so far as the claims and counter claims by the rival parties that they are in administration and management of BRAPS and minority

institutions of BRAPS are concerned, there are serious disputed questions of fact and both claim to be in administration and management and even

number of civil proceedings are pending in the Patna Civil Court as well as Delhi Court, we refrain from passing any order on the aforesaid and we

leave it to the parties to agitate the same before appropriate Court/Forum, may be in the pending proceedings.

9. In view of the above and for the reasons stated above, both these APPEALS SUCCEED. The impugned judgment and order passed by the learned

Single Judge dated 22.06.2018 passed in CWJC No.8258 of 2017 insofar as the directions contained in paragraph 31, is hereby quashed and set aside.

No costs.