

(2008) 07 PAT CK 0132
In the Patna High Court
Case No : LPA No. 286 of 2001

Deo Krishna Pathak

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Citation : (2008) 4 PLJR 373

Hon'ble Judges : Jayanandan Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Ambar Nath Banerjee, for the Appellant; Arbind Ujjawal for the State, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh & Jayanandan Singh, JJ.—On the basis of the directions of the Chairman, Bihar Sanskrit Shiksha Board, the Secretary of the Board by the letter dated 9th November, 1989, while dissolved the Managing Committee of Deo Narayan Mithila Sanskrit Uchcha Vidyalaya, Sabha Sasaula, Sitamarhi, appointed the appellant as the Secretary and one Chandradeo Mishra as the Chairman respectively of the ad hoc Managing Committee of the said school so constituted alongwith three other persons as its members. The said order was challenged in the writ petition. The writ petition was contested only by the appellant. The writ petition was allowed on the ground that the Chairman of the Board had no power to constitute ad hoc Committee and to dissolve Managing Committee of a Sanskrit Vidyalaya on the strength of the decision of a Division Bench of this Court rendered in the case of Chandra Nath Thakur vs. Bihar Sanskrit Shiksha Board, reported in 1991 (1) PLJR 529.

2. In the present appeal, amongst others, it is the contention of the appellant that in terms of sub-section (4) of Section 11 of the Act, the Chairman of the Board has power to discharge the duties and functions of the Board when the Board is not in session. The fact that the Board was not in session on 9th November, 1989 has not been reflected in the order dated 9th November, 1989,

impugned in the writ petition. In the counter affidavit filed by respondent no. 7, he did not say so. In the present appeal too, he has not said so.

3. Learned Counsel appearing in support of the appeal contended that he has knowledge that after many litigations came to an end, in 2006 only the Board was constituted. We gave Learned Counsel for the appellant an option to adduce oral evidence subject to cross-examination, but he refused to take up the cudgel.

4. The other point that was taken by the appellant to contest the writ petition was that the self-same order was the subject matter of two other previous writ petitions and since the previous two writ petitions were dismissed as infructuous, the present writ petition is barred by *res judicata*. The fact remains that when the first writ petition was filed challenging the said order dated 9th November, 1989, the school in question was taken over and accordingly in such a situation the school could not be managed either by its Managing Committee or by an appointed *ad hoc* Managing Committee. In such situation, the first writ petition was declared infructuous. The second writ petition was also declared infructuous for the self-same reason. The fact remains that though twice temporarily the school had been taken over, but ultimately the same had not been taken over. Unfortunately for the members of the Managing Committee, whenever their writ petitions were taken up for consideration in the first two rounds of litigations, the school had been taken over. In the circumstances, the orders passed in the first two writ petitions, in the matter of deciding the merits of the third writ petition, did not stand as *res judicata*.

5. The third point that was urged while contesting the writ petition was the delay on the part of the writ petitioner in approaching the writ court. The delay, in the facts and circumstances had been squarely explained, for, unfortunately, whenever the writ petitioner came to this Court, as a bliss to the appellant before us, the school was temporarily taken over.

6. Learned Counsel for the appellant lastly contended that in any event the order dated 9th November, 1989 was passed considering the request made in 1983 by the Managing Committee of the School in question. In law, howsoever good one attempts to do and howsoever logical the things done may be, if the doer has no jurisdiction to do what has been done, the same would tantamount to malice in law. The action in the instant case as held by this Court, which we confirm, was a malice in law on the part of the Chairman of the Board, as he had no authority to do what he did.

7. Learned Counsel for the appellant ultimately contended that though the Act provides for framing of Rules but in fact no Rules have yet been framed and accordingly previous Rules governing the field should be deemed to be the Rules for the purpose of discharge of duties entrusted by the Act. Such submission can be accepted, subject to the rider that the previous Rules, which are not inconsistent with the provisions of the Act, may still hold good. The Act has nowhere authorized the Chairman to do what has been done by the order dated

9th November, 1989. Therefore, previous Rules to that extent, being inconsistent with the Act, could not authorize the Chairman to do what he did in the form of the order dated 9th November, 1989. The appeal accordingly fails and the same is dismissed with further cost of Rs. 5,000/-.