

(2001) 01 PAT CK 0044
In the Patna High Court
Case No : C.W.J.C. No. 9692 of 1989

Dilip Kumar Mishra and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Citation : (2001) 2 BLJR 1088 : (2001) 1 PLJR 554

Hon'ble Judges : N. pandey, J;I. P. Singh, J

Bench : Division Bench

Judgement

N. Pandey, J.—This writ petition was filed for a direction to the respondent-State to grant recognition to all the 12 Prathamik-Sah-Madhyama Sanskrit Schools (represented through the petitioners in this case). Grievance was made although applications for grant of recognition in this regard were pending before the Government since the year, 1985, but no order was passed. In the meantime, several others similarly situated schools were recognised.

2. All the petitioners; schools, as stated, were established in the year, 1977-78 at the respective places in different Districts. By virtue of Ordinance No. 84/1980, the State Government constituted an autonomous Board for the development and better supervision of Sanskrit education up to Madhyama Standard in this State. Under the provisions of Sub-clause (2)(a) of Clause 6 of the said Ordinance, the Bihar Education Sanskrit Board was vested with the powers to grant recognition to Sanskrit Schools with the prior approval of the competent authority within the sanctioned strength fixed by the State Government in accordance with the Regulations framed at the relevant time. In course of time, an enactment called as Bihar Sanskrit Education Board Act, 1981, was published in the Bihar Gazette (Extraordinary) dated 21-1-1982, applying its provisions retrospectively with effect from 11-8-1980.

3. Undisputedly a committee, which was constituted by the State Government, recommended names of 204 schools in first phase and 22 schools of various grades including petitioners' schools in second phase. The Government,

however, granted approval only with respect to 205 schools, but 21 schools including the names of the petitioners' schools were kept pending.

4. The petitioners made a grievance although these schools are similar to those 205 schools, which have been subsequently recognised, but the respondents adopted a discriminatory attitude, therefore, the present case.

5. It appears having appreciated the grievance of the petitioner, on 10-4-1991, this Court had directed the District Administration including the District Magistrate of the concerned Districts to enquire and take a final decision in the matter after hearing the relevant parties on the question of recognition and communicate the same to the petitioners. It was also indicated if the decision was found adverse to the petitioners, in that event the order must contain reasons.

6. Undisputedly, in compliance of the aforesaid order, from time to time different counter-affidavits were filed through the Secretary, Human Resources, Special Director, Secondary Education and respective District Magistrates. From a perusal of these affidavits, it would appear that on inquiry approval for recognition was granted only with respect to two of the petitioners schools, namely, primary-cum-Middle Sanskrit School, Kila Paharpur, Begusarai and Primary-cum-Middle Sanskrit School, Kishanpur M. Yusuf, Sarairianjan, Samastipur, vide letter No. 184/C dated 16-8-1991 and letter No. 947 dated 9-9-1992, subject to the concurrence of the finance Department. With respect to the prayer for recognition of the remaining schools, the Government, however, finally rejected. Subsequently through a second supplementary counter-affidavit, it was further communicated that in view of the Government's decision dated 19-12-1995, financial aid will be given only to such schools, those were granted recognition prior to 2nd December, 1982. Thus, in this background it was communicated that recognition with respect to the abovementioned two schools also will be without any financial aid. A reference in this regard can be made to a copy of the notification of the State Government dated 18th June, 1994, as contained in Annexure-A to the counter-affidavit of respondent No. 2.

7. Mr. Singh, learned Senior Counsel appearing on behalf of the petitioners contended that from a bare reference to the counter-affidavits on behalf of the respondents, it would appear that approval of the Government for grant of recognition was already accorded in the year, 1991 and 1992 which would also be evident from letter No. 184/C dated 16-8-1991 and letter No. 947 dated 9-9-1992. Therefore, the decision of the State Government, contained in Annexure-A dated 18-6-1994 cannot be applied retrospectively. Because all the necessary formalities for grant of approval and recognition were complete prior to the Government's notification, as contained in Annexure-A.

8. On behalf of the State Government, however, it was contended that in view of the proviso to Clause 8(a) of the notification, anything done or section taken under the previous notifications or the orders issued by the State Government,

shall be deemed to have been done or taken in exercise of the powers conferred by or under this notification, as if it was in force on the day on which such action was taken. Therefore, keeping in mind the aforesaid provisions, a letter was issued by the Additional Secretary to the Government that such a recognition would be without any financial aid.

9. From the materials noticed above, there is no dispute that 205 schools, like the present two schools, about which recommendations have also been made, were granted recognition by the State Government with financial aid. Since all these schools were not recognised for want of proper inspection, presently, from the materials noticed above, it would appear that there was no fault of the managing committees of these schools which may justify the decision of the Government to grant recognition without financial aid. We have been pointed out that similar was the problem with the managing committee of the Kamla Madhya-Sah-Madhyamik Sanskrit High School, Misroulia on whose behalf of 1991 C.W.J.C. 7061 was allowed with a direction to the State Government to grant recognition with financial aid. A reference to the order in the above case further discloses that in another case bearing 1987 C.W.J.C. 3742 of filed on behalf of Laxmi Narain Tripathi Narain School, a direction was issued by the Court for recognition with financial aid from the date of recognition.

10. No material was placed on behalf of the State to distinguish the cases of these two petitioners' schools to that of the abovementioned school which have been recognised with financial aid. Therefore, in my view, the State's action must be in conformity with the Rule of equity. In the instant case, so far as the claim of these two petitioners is concerned, there appears no justifiable reason to deny the claim for recognition with financial aid.

11. In the result, for the reasons stated above, the claim of abovementioned two schools is allowed with a direction to the Government to grant financial aid from the date of recognition. So far as the remaining petitioners' schools are concerned, as there was no recommendation for grant of recognition, it would not be possible for the Court to issue such direction.

12. With the above observations/directions, the writ application is, thus, disposed of, but without cost.