

(2023) 08 PAT CK 0084

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.3882 Of 2023

Maharaja Harendra Kishore Inter College

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 31-08-2023

Acts Referred:

Citation : (2023) 08 PAT CK 0084

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : P.N. Shahi, Pravashankar Mishra, Rajeev Shekhar, Manish Kumar, Binita Singh, Nishant Kumar Jha

Final Decision : Allowed

Judgement

1. Heard Mr. P.N. Shahi, learned senior counsel assisted by Mr. Pravashankar Mishra, learned Advocate for the petitioner, Mr. Manish Kumar, learned counsel for the Bihar School Examination Board, Patna and Ms. Binita Singh, learned SC-28 for the State.

2. This writ application has been filed seeking the following reliefs:

"i. To issue appropriate, rule/rules, direction/directions, writ/writs in the nature of Mandamus for directing the concerned Respondent authorities to grant further affiliation in favor of the petitioner college from the Bihar School Examination Board, Patna for intermediate course in Arts, Science and Commerce stream for session 2023-25.

ii. To issue an appropriate writ in the nature of certiorari for quashing the office order contained in letter no. BSEB(SS)Coll-Estsb/3554/D-2022 dated 30.09.2022 (Annexure-6) by issued under the signature of Director Education, Bihar School Examination Board Respondent no. 5 by which the petitioner college has been directed to furnish necessary documents including the lease deed.

iii. To issue directions to concerned respondent authority to implement the order

of this Hon'ble Court passed in CWJC No. 4311 of 1982 in true spirit and also they may be directed to execute the lease deed in the favour of the petitioner college.

iv. To issue directions to concerned respondent authority not to disturb the possession of land and building of the petitioner college during the pendency of this writ application.

v. To issue directions to concerned respondent authority to protect the status of petitioner college as this institution has been running since 1979 for the local students and providing education facilities to the needy people.

vi. And any other relief or reliefs for which the petitioner be found entitled in law be granted to him."

3. By filing interlocutory applications being I.A. No. 01/2023 and I.A. No. 02/2023 the petitioner has added some more reliefs and has brought certain facts with the interlocutory applications which have been treated as part and parcel of the writ application vide order dated 29.08.2023 passed by this Court. Those prayers are also being reproduced hereunder for a ready reference:

I.A. No. 01 of 2023

"vii. To issue a writ in the nature of certiorari for quashing the letter contained in letter no. BSEB(SS)Coll-Estab-383/D-2023 issued under the signature of Director Academic Bihar School Examination Board being no. 953 dated 06.02.2023 (Annexure-6).

viii. To issue a writ, order or direction in the nature of mandamus directing the concerned Respondent authorities to grant affiliation in favor of the petitioner college for the session of 2022-24.

ix. To issue a writ, order or direction in the nature of mandamus directing the concerned Respondent authorities to allow admission and registration of the students in the session of 2022-24.

x. To any other order or orders which your lordships deem fit and proper under the circumstances of the case may be passed."

I.A. No. 02 of 2023

"xi. To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to allow the petitioner to get admission of the new student in the current session.

xii. To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to include the name and publish the list on the website www.ofsssbihar.in through the advertisement no. PR 94/23.

xiii. To issue an appropriate writ/order/direction in the nature of Mandamus for quashing the letter issued by the respondent authority contained in letter no.

BSEB(SS)Co-Estats 8/6D-2023 dated 03.04.2023, by which the petitioner has been directed to supply list of students studying in the current session for purpose of tagged with another college.

xiv. To any other order or orders which your lordships deem fit and proper under the circumstances of the case may be passed.”

4. At this stage, the bone of contention between the parties i.e. the petitioner and the Bihar School Examination Board (hereinafter referred to as the “Board”) is the communication as contained in letter no. BSEB(SS) Coll-Estab-383/D-2023 dated 06.02.2023 whereby and whereunder the Board has taken a decision to reject the application of the petitioner seeking affiliation of the Inter college and has decided to cancel the affiliation of the petitioner and the intermediate level Code (34006) with effect from the academic session 2022-2024 and it has been further decided that in case students have been admitted in the said college for the session 2022-24, then, the arrangements for their studies and examination will be made by the Board.

5. Learned counsel for the Board has brought to the notice of this Court the communication contained in memo no. 816 dated 03.04.2023 issued by the Director (Education) to the District Education Officer, East Champaran vide Annexure ‘12’ to I.A. No. 02/2023, whereby and whereunder the District Education Officer has been directed to tag the students of this college with the nearest affiliated/Government Plus Two college and inform him. At the same time, the Director (Education) reprimanded the District Education Officer that despite a lapse of two months there was no information to him in this regard even as the matter relates to the studies of the students and their appearing in Class XIth examination.

6. It is still not known whether the students have been tagged with any nearest school.

7. On perusal of Annexure ‘6’ to the I.A. No. 02/2023, it would appear that basically two grounds have been stated for rejecting the application of the petitioner for affiliation for the session 2022-24. The first ground is that the college does not have a land registered in it’s name and the second ground is that number of teachers in the school are less than the parameters as indicated in the Bihar School Examination Board Affiliation Regulation 2011 (as amended up to date). This Court has been informed by learned counsel for the Board that there is a shortage of one teacher in the science faculty and one teacher in the commerce faculty.

8. Contesting the grounds on which the request for affiliation of the college has been rejected, learned senior counsel for the petitioner has taken this Court through the records particularly the two judgments dealing with the subject. The first judgment is of the Additional Collector passed on 06.09.1982 in an appeal preferred by the State being case No. 12/81-82. In the said case the State of Bihar claimed that the premises in question was a government premises and the

respondent who was the convener of this college was an unauthorised occupant. The Additional Collector went through the records and finally concluded in the following terms:-

" From the discussions made so far I have come to the conclusion that the premises in question has acquired nature of Govt. premises and that Respondent is only 'technically' in unauthorized occupation of the same but for the various reasons stated earlier in this order, it will not be just and proper to pass an order of eviction against the respondent for the present. Rather, it will be proper in this case to regularise the unauthorised occupation by granting a lease to Respondent. The prayer of 99 years lease as made by the Respondent appears to be a long period for lease. The convention of 30 years lease as established by ex-proprietor Bettiah Estate appears, to my mind, to be fair and reasonable. State of Bihar, should, therefore, grant a lease of 30 years to the Respondent or of any other reasonable/less period as it considers proper. While leasing out premises in question, State may have a right to charge rent at penal rate from the respondent for the unauthorized period of occupation. The premises in question has a big area and has four buildings therein. Therefore, the Respondent will have to agree to any proposal of re-adjustment to be made by Government in matter of allotment if and when felt necessary by State to do so."

9. It appears that the said order was assailed by the convener of the college in CWJC No. 4311/1982 which was heard and disposed of vide order dated 6th August, 1992. This Court held that the direction of the Additional Collector for the settlement of the land in favour of the college for a period of 30 years or any reasonable period had become final in view of the facts mentioned therein and that the case of the petitioner has to be considered in the light of the directions given by the Additional Collector in the impugned order. In paragraph '9' of it's judgment the Hon'ble Division Bench issued the following directions:

"9. Learned counsel for the petitioner during the course of argument draw our attention to the fact that an application for grant of lease in favour of the college had already been filed before the Collector of the District and no final order has been passed on the aforesaid petition. In that view of the matter, we direct the respondents to consider and dispose of the aforesaid application in the light of the directions as contained in annexure-3 within a period of three months from the date of receipt/production of a copy of this order."

10. It is an admitted position that the order of the Hon'ble Division Bench of this Court has not been complied with. The petitioner college was allowed to continue but without considering the direction of the Additional Collector which was affirmed by the Hon'ble Division Bench to consider settlement of the land in favour of the college.

11. This Court has been informed that in fact the State of Bihar had also preferred a writ application against the order of the Additional Collector giving rise to CWJC No. 3845/1982 which was heard and dismissed by this Court.

12. At this stage, in the counter affidavit filed on behalf of the State, a plea has been taken that the file of the old matter has not been traced to verify as to what action has been taken by the predecessor in office of the answering respondent no. 6 on the petition filed by the petitioner for lease. It is stated that as per Chapter 2(kha) of the Bihar Government Estate (Khasmahal) Rule 2011, any government land is to be let-out on payment of recent market value of the land and 5% of market value of the land as rent for the same. It is stated that no such offer has been received from the petitioner and in case such offer is received the matter will be enquired into and will be disposed of in accordance with law.

13. In the aforementioned background, this Court has to take a view as to whether the respondent Board is required to reject the affiliation application only by taking note of the fact that the college is not having a land in its name or the Board while considering the said ground for purpose of rejection of the request for affiliation has to take into consideration the circumstances which are peculiar to the facts of this case and in which the inaction writs large on the part of the State inasmuch as the State has not taken any decision over all these years with respect to grant of lease to the petitioner despite the direction of this Court as contained in the judgment dated 6th August 1982 passed in CWJC No. 4311/1982.

14. To this Court, it appears that no doubt the Board has power to reject the request for affiliation on the grounds stated under Rule '3' of the Affiliation Regulation of 2011, such powers are required to be exercised reasonably particularly in a case like the present one where the college is running for last more than 40 years and an action towards cancellation of affiliation would lead to the closure of the college as also it will have a drastic effect on the studies of the students who had already been admitted in the session 2022-24. In any case the Board was required to consider as to whether a retrospective cancellation of affiliation of the college would be just and proper and in accordance with law in the present case.

15. In the opinion of this Court, the case like the present one is required to be dealt-with with some sort of circumspection and care. This Court finds that the decision to reject the request for affiliation of the school and retrospective cancellation of the affiliation on this ground suffers from non-consideration of the relevant materials and it is required to be considered afresh after giving appropriate opportunity to the petitioner to approach the concerned department of the government from where a decision is to be taken with respect to the grant of lease to the petitioner college. The inaction on the part of the State Department in not taking appropriate steps despite judgment of the Hon'ble Division Bench of this Court cannot be to the disadvantage of the petitioner.

16. So far as the second ground of shortage of the teaching strength is concerned, there is shortage of one teacher in two faculties and it is the stand of the petitioner that the matter relating to the constitution of the managing

committee of the college is pending with the Board and for that reason only the fresh appointment has not taken place. It is submitted that as soon as the Board clears the constitution of the managing committee, the petitioner would immediately fill up the vacant post.

17. As regards removal of discrepancies, learned counsel for the Board has submitted that prior to passing of the impugned order, the petitioner was called upon to remove the discrepancies which would be evident from Annexure '8' to I.A. No. 01/2023 but the discrepancies with regard to the shortage of teacher in the science and commerce faculty was not removed. However, in this regard, learned senior counsel for the petitioner points out that the petitioner had sent it's response to the Board which would be evident from Annexure '9' to the same interlocutory application, but, the response of the petitioner has not been considered. In the counter affidavit of the Board, there is no denial that the petitioner had responded. At the same time, there is no statement that the reply of the petitioner was considered before passing of the impugned order.

18. Learned counsel for the Board has though submitted that the Board is empowered to cancel the affiliation of the college and reject the application of the petitioner college on the grounds stated under Rule 3 of the Affiliation Regulation 2011, learned counsel is unable to demonstrate that the facts which are involved in the present writ application were ever considered by the Court. In the opinion of this Court, existence of power is one thing but exercise of power would be another thing.

19. The submission on behalf of the petitioner is that the drastic powers conferred upon the Board are required to be exercise with more responsibility and compassion keeping in view the public function of imparting education being performed by the petitioner college. This Court finds force in this submission.

20. Considering the entire facts and the submissions as taken note of hereinabove and the opinion of this Court expressed in the preceding paragraphs, this Court sets-aside the impugned order as contained in Annexure '6' to the I.A. No. 01/2023 and the consequential action, if any, taken pursuant to the same are set-at-naught.

21. The Board is directed to consider the application of the petitioner college afresh after giving an opportunity to the petitioner to place all such materials which may be relevant to the decision making process and after consideration of all the materials the Board shall take an appropriate decision within a reasonable period.

22. The petitioner is at liberty to pursue his remedy as may be advised to him in connection with the lease of the land in accordance with the judgment of this Court in C.W.J.C. No. 4311 of 1982.

23. This Writ Application is allowed to the extent indicated hereinabove.