
(2015) 12 PAT CK 0084

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10816 of 2014

Manish Mishra

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Bihar Private Engineering College (Taking Over) Act, 1991 — Section 3(3)
Constitution of India, 1950 — Article 226

Citation : (2017) 1 PLJR 605

Hon'ble Judges : Mr. Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Mr. Gyan Prakash Ojha, GP22 and Mr. Sushil Kumar Singh, A.C. to GP22, for the State; Mr. Y.V. Giri, Sr. Advocate and Mr. Binodanand Mishra, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Mr. Ajay Kumar Tripathi, J. (Oral) - Petitioner filed the writ application because he happened to be the son of the individual in whose name an engineering college at Darbhanga was set up by the initiative of the family. This was done many decades ago as a private venture. The Court also cannot be unmindful of the fact that the father of the present petitioner also happened to be the Chief Minister of the State not once but at least three times. He was also Union Cabinet Minister. He has a reason to be aggrieved when the State authority decided to change the name of the institution after many-many years of its functioning by a kind of executive decision not based on a decision of the State Cabinet as such, as is the contention of the learned senior counsel for the petitioner. When the first effort was made and a notification was issued on 17.11.2008 under the signature of the Secretary of the Department, the petitioner approached the High Court by filing CWJC No.1194 of 2010. The learned single judge has taken a detailed note of the background under which the institution was set up, the take over of the institution by an Ordinance which was subsequently made into an Act in the year 1991. However, after dwelling on the various issues raised on behalf of the

petitioner and the State, the learned single judge directed the State authorities to consider the representation to be moved by the petitioner.

2. Annexure-11 is the decision now which is dated 24.05.2013. The Principal Secretary, Science and Technology has rejected the objection of the petitioner and, therefore, the second round of litigation.

3. The Court is not required to go into the factual aspect of the matter any more as to when how the institution was set up and how the State Government decided to take it over etc. The core issue is whether the decision contained in Annexure-11 is legally sustainable or not.

4. Not only from a reading of the impugned order Annexure-11 but even from the stand of the State in the counter affidavit, it is evident that the respondents are harping on the power which is vested in them under Section 3(3) of Bihar Private Engineering College (Taking Over) Act, 1991. The Court, therefore, reproduces the provision for ready reference.

"3- futh vfHk;a=.k egkfo|ky;ksa dk xzg.kA& (1) bl vf/kfu;e ds izHkkoh gksus dh frfFk ls bafM;u dkWyst vkWQ baftfu;fjax] eksfrgkjh] ts0,e0vkbZ0Vh0] njHkaxk ,oa ex/k bathfu;fjax dkWyst] x;k IHkh _.kHkkjksa ls eqDr gksdj jkT; ljdkj dks vUrfjr rFkk mlesa iw.kZr% fufgr gks tk;saxsA"

2- mi&/kkjk (1) esa of.kZr IHkh futh vfHk;a=.k egkfo|ky;ksa ds lkFk&lkFk mlls vkuq"kafxd IHkh "kklh fudk;ksa ;k izcU/k lfeFr;ksa dh IHkh py ;k vpy vkfLr;kWa] lEifRr;kWa] ftlesa Hkwfe] Hkou] iz;ksx"kkjk] deZ"kkjk] HkaMkj] midj.k] e"khujh] xkfM+;kWa] udn "ks"k] vkjf{kr fuf/k] iwWath fofu/kku] QuhZpj vkSj fQDldj vkSj vU; oLrq,Wa Hkh "kkfey gSa] IHkh _.kHkkjksa ls eqDr gksdj xzg.k dh rkjh[k ls jkT; ljdkj dks vUrfjr vkSj mlesa fufgr gks tk;sxA

3- bu futh vfHk;a=.k vfHk;ark egkfo|ky;ksa dk fdLh vU; rduhdh laLFkk esa ifjofrZr djus dh "kfDr jkT; ljdkj dks jgsxh vkSj le>k tk;sxk fd ;g ges"kk ls izo`Rr gSA

(emphasis mine)

5. Learned senior counsel reads and re-reads the provision contained in clause 3(3) of the above statute and submits that the power vested in the State Government to make changes in the institution into any other technical institution does not include power to change the name of the institution which was taken over as per the Ordinance and the Act. The take over Ordinance Act specifically stated as to what was being taken over and being vested in the State of Bihar. This power to bring about changes has been provided with the object of bringing certain additions to the technical education which may be imparted or to include over and above subjects or stream which the institution was imparting after its constitution as well as take over. The word "ifjofrZr" cannot be read to bring about change even in the name of the institution.

6. The Principal Secretary, Science and Technology has read the said provision to

mean bringing about all changes which includes change of the name of the institution as well. Unfortunately in the opinion of this Court, more power is being read by the respondent authorities specially the functionary of the Science and Technology in clause 3(3) than what the object behind such enactment is.

7. Reading of the entirety of the provisions of the Ordinance as well as the Act does not reflect any power to change the name of the institution. If such changes is required to be brought about, in the opinion of the Court, amendment to the Act will have to be done and it cannot be read into clause 3(3) to change the name of the institution.

8. In totality, therefore, clause 3(3) is not the power under which name of the institution can be changed.

9. The impugned orders contained in Annexures-7 and 11 dated 17.11.2008 and 24.05.2013 respectively suffer from vice of excessive exercise of authority which is non-existent in the statutory provision, therefore, the same are quashed.

10. Writ application is allowed.