

(2004) 06 PAT CK 0025
In the Patna High Court
Case No : C.W.J.C. No. 5392 of 2004

Prof. Kula Nand Jha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-06-2004

Acts Referred:

Constitution of India, 1950 — Article 23

Citation : (2004) 4 PLJR 731

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : S.N. Jha, Kripa Nand Jha and Anil Kumar Sinha, for the Appellant;
S.K. Ghose and Nirmal Kr. Sinha for the State, for the Respondent

Final Decision : Allowed

Judgement

1. This is not a matter which should detain the court any further. What has been appended to supplement the writ petition is the record of the State. The court cannot give any order so that it may become a policy for execution. In so far as a policy is concerned, this will have to be drafted by the government itself. But what is of concern is the subject physical training for children who enter schools whether it is primary, elementary or secondary. Between 1955-2004 a passage of almost half century the government's files apparently seem to be shuttling between the bureaucrats and the ministers suggesting that a policy be made of putting in a physical training teacher in every recognized school. After 50 years, the policy has yet to be made.

2. This in itself shows why India, the second largest nation as far population is concerned, virtually comes at the bottom of the ladder in international sports events. If sports are the concern of the government, so it appears from the record, then inculcation has to begin right from the beginning. The sports stadiums which are made with colossal expenses from public funds are few and far in between. Take any State stadium anywhere in the nation only those can use it as are the favoured few with State benefaction. Inside the State sports

stadia are the children of bureaucrats and high ranking officials. Ordinary people cannot have an entry into the State stadiums so that sports as a discipline is available to the poor man's son. There is a sportsman lurking around amongst these poor underprivileged of the society.

3. The government of Bihar was issuing a circular on 27 May 1955 placing on record "gradually every school should endeavour to create an additional posts of assistant master for physical Education and health" (Annexure 3). By a circular of 17 February 1981 the State government was reiterating its intention to place a physical training teacher as part of the programme in schools. The expression used in the circular is

(Annexure 6). Another circular of 23 March 1982 was men-

September 1998 a high level committee of

(Annexure 23). On 28 March 2000 a proposition was being placed on record of recruiting physical training teachers through the Bihar Public Service Commission and Vidyalaya Seva Board (Annexure 24). Another circular of 15 February 2001 was yet contemplating the creation of a policy on the recruitment of physical training teachers (Annexure 24).

4. In between files shuttled between the Legal Remembrancer and the Advocate General, Bihar. Such shuttling of files will not create sportsmen. If one wants sports in Bihar to go anyway near the national level, the endeavour to find the sportsman or woman will be at the ground level. There will have to be a dedicated policy (1) on physical training and (2) sports as a dedication programme. Catch them young will have to be the theme. For 50 years one cannot leave matters for chalking out a policy.

5. Perhaps unknown to the authorities lies a provision in the Constitution which is not different in context. It is sub clause (2) of Article 23, which permits the State to take compulsory service. The issue here is not of compulsory service from the youth but at least putting an element of discipline which is the product of compulsory service. The State record itself shows that physical training is part of education. In compulsory service it is part of a package. Compulsory service is for the youth not for those who are out of service and in retirement.

6. The shameful part is that for 50 years a policy has yet to be formulated whether there should be a physical training teacher at the block level or in a school. This policy cannot be delayed. While the government is carrying out an exercise for putting teachers in the primary schools an aspect not to be ignored is placing a physical training teacher in elementary as well as secondary school. This petition succeeds.