
(2015) 04 JH CK 0008
In the Jharkhand High Court
Case No : L.P.A. No. 54 of 2013

Punjab Vidya Sabha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Citation : (2015) 4 AJR 21

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Saurav Arun, for the Appellant; Srijit Choudhary, G.A., for the Respondent

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been preferred by the appellant (original petitioner) against judgment and order dated 18th January, 2013, passed by the learned single Judge, in W.P.(C) No. 5869 of 2007, whereby petition preferred by this appellant (original petitioner) was dismissed. Counsel appearing for the appellant (original petitioner) submitted that appellant is the Managing Committee of Sardar Madho Singh Memorial Girls High School situated in the city of Jamshedpur and it had preferred application before the Govt. of Bihar for grant of minority status on several grounds. Thereafter, C.W.J.C. No. 2201 of 1989(R) was preferred because the said application remained undecided. The Hon'ble Court, vide Order dated 6th December, 1989, passed in the said writ petition, was pleased to direct the Government to dispose of the claim of the petitioner. In pursuance of the said order, decision was taken rejecting the claim of the petitioner, but, instead of the State Government, said decision was taken by the Director of the concerned department. Therefore, second writ petition, i.e. C.W.J.C. No. 1311/1990(R) was preferred, which was allowed vide order dated 7th March, 1994 and Government was asked to decide the claim of the petitioner. Claim of the petitioner was again rejected on 22nd December, 1995 by the then Government of Bihar and therefore, one more writ,

being C.W.J.C. No. 1401/1996(R) was preferred challenging the said decision, which was decided by the court and the matter was remanded back to the concerned appropriate authority of the State of Jharkhand to consider the matter afresh after bifurcation of the State of Jharkhand and ultimately, State of Jharkhand also rejected the application preferred by this petitioner for declaration of the school in question as a minority school vide Order dated 17th April, 2007 and therefore, fourth writ petition, being W.P.(C) No. 5869 of 2007 was instituted by the appellant. Order dated 17th April, 2007, passed by the State Government, is at Annexure 14 to the memo of the writ petition. In the said order it has been observed that this appellant (original petitioner) has no locus standi because management of the school in question has been taken over under Section 3(1) of Bihar Non Government (Taking Over of Management and Control) Act, 1981 and since the management was taken over, the State of Jharkhand has refused to entertain the application of this appellant for grant of minority status. Nonetheless, the fact remains the same that control and management of the school has remained with this petitioner. In the very same school building another school, i.e. a middle school, has already been given minority status. This aspect of the matter has not been properly appreciated either by the Principal Secretary, Human Resources Development Department, Govt. of Jharkhand while passing Order dated 17th April, 2007 or by the learned Single Judge while dismissing W.P.(C) No. 5869 of 2007 vide order dated 18th January, 2000. Even otherwise also, taking into consideration the fact that Sardar Madho singh Memorial Girls High School situated in the city of Jamshedpur, is run by Punjab Vidya Sabha (Punjab Educational Society), a linguistic minority institution, minority status should be given to the said school and hence judgment and order passed by the Principal Secretary, Human Resources Development Department, Govt. of Jharkhand as well as the order dated 18th January, 2013, passed by learned single Judge in W.P.(C) No. 5869 of 2007 deserves to be quashed and set aside.

2. Counsel for the State has submitted that this petitioner has no locus standi. The management of the school was taken over by the State in the year 1980 under Section 3(1) of the Bihar Non Government (Taking Over of Management and Control) Act, 1981 and under the preceding Ordinance, viz. Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Ordinance, 1980. This order of, vide which the management of the school was taken over, have never been challenged by the appellant, meaning thereby the said order has attained finality. Thereafter, several appointments have been made, but this appellant never raised any objection in this regard and later on this appellant filed application for grant of minority status, which was rejected time and again because this appellant was never in the Managing Committee of Sardar Madho Singh Memorial Girls High School situated in the city of Jamshedpur. Therefore, this appellant has no locus standi. Even otherwise also, grant of minority status is a power vested in the State and if there is power vested in the State there has to be a corresponding right in the appellant. In the

present case, there is no duty vested in the Government as there is no corresponding right vested in the appellant regarding grant of minority status in the light of the fact that appellant was never in the managing committee of the school in question and said school has already been taken over and the appellant never challenged the order vide which it was taken over. It is further submitted by counsel for the State that once it is not a right of the appellant there is no question of any duty vested in the State of Jharkhand, much less a public duty and once there is no public duty vested in the Government, no writ of mandamus can be issued upon the State and hence this Letters Patent Appeal may not be entertained.

Reasons:

3. Having heard counsel for both sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly for the following facts and reasons.

(I) Apparently, petitioner has repeatedly made unnecessary hue and cry in the court and it is rightly observed by the learned single Judge in his judgment dated 18th January, 2013 in W.P.(C) No. 5869 of 2007 that it is the fourth round of litigation on the same subject matter, i.e. grant of minority status to the school in question. Following are the writ petitions filed by the appellant:

(a) C.W.J.C. No. 2201 of 1989(R)

(b) C.W.J.C. No. 1311 of 1990(R)

(c) C.W.J.C. No. 1401 of 1996(R) and

(d) W.P.(C) No. 5869 of 2007

It appears that this appellant is claiming that it is running a school, viz. Sardar Madho Singh Memorial Girls High School in the city of Jamshedpur, Jharkhand, but it is factually incorrect. Management of the school has already been taken over by the Government under Section 3(1) of the Bihar Non Government (Taking Over of Management and Control) Act, 1981 and earlier under the preceding Ordinance, viz. Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Ordinance, 1980. Therefore, management of the aforesaid school was taken over by the Government on 2nd October. 1980. Thus, it appears that the aforesaid appellant (original petitioner) had no locus standi to prefer application in the year 1989 for grant of minority status. This unnecessary application at behest of the appellant for grant of minority status resulted in four different writ petitions and the present Letters Patent Appeal. As management of the school was already taken over by the Government this appellant had no locus standi to prefer such application because it was not anymore in the management of Sardar Madho Singh Memorial Girls High School situated in the city of Jamshedpur. This aspect of the matter was appreciated by the Principal Secretary, Human Resources Development Department, Government of Jharkhand vide his Order dated 25th April, 2007 (Annexure 14 to

the memo of the writ petition) and also by the learned single Judge in his order dated 18th January, 2013 while dismissing W.P.(S) No. 5869 of 2007. It further appears that the order of taking over of the management by the State Government under the Ordinance of 1980 and the Act of 1981 has never been challenged by the Appellant-Management. It further appears that tuition fees collected by this school has been deposited in the District Education Fund. Thus, all collections are going to Government coffer and salary of the teaching and non teaching staff were also paid by the Government. Thus, there is no supervision and control of original petitioner upon the management of the school in question.

(II) Another fact which negates the claim of the petitioner of being the Managing Committee of the school concerned is that an ad-hoc Managing Committee was constituted by the Government and the Block Development Officer was the Chairman of the said Managing Committee constituted by the Government for the management of this school and thereafter permanent Managing Committee was also constituted, as stated in paragraph 5 of the judgment dated 18th January, 2013 passed by the learned single Judge in W.P.(C) No. 5869 of 2007. Said Managing Committee continued to manage and run the school till the school was nationalised. It further appears that between the period during which the school was run by of ad hoc Managing Committee till the permanent Managing Committee came into force, there were several appointments made between 1976 and 1980 in the school and the fact that this appellant (original petitioner) never raised any objection against these developments, itself clearly establishes that control and functioning of the Managing Committee and running of the school was in the hands of the respondent authorities. Thus, this appellant (original petitioner) had no control over the management of the school in question since last three decades and therefore, it has no power jurisdiction and authority to prefer any application for grant of minority status. As it appears from the facts of the case, this appellant preferred application in the year 1989 under a wrong notion for grant of minority status to the school in question and this appellant preferred four writ petitions and this Letters Patent Appeal, but all in vain because, for the reasons stated hereinabove, since approximately last three decades this appellant is not in the management of Sardar Madho Singh Memorial Girls High School situated in the city of Jamshedpur. Moreover, as this school has already been taken over, it cannot be granted minority status. Therefore, no error has been committed by the learned single judge in dismissing W.P.(C) No. 5869 of 2007 on appreciation of the above noted facts and reasons.

4. As a cumulative effect of the facts and reasons, we are not inclined to take any view other than what has been taken by the learned single Judge vide Order dated 18th January, 2013 passed in W.P.(C) No. 5869 of 2007. There is no substance in this Letters Patent Appeal, which is accordingly dismissed.