

(1980) 08 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jur. Case No. 949 of 1980

Purnima Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-08-1980

Acts Referred:

Citation : AIR 1981 Patna 127 : (1981) 29 BLJR 98

Hon'ble Judges : Hari Lal Agrawal, J

Bench : Single Bench

Advocate : Shyama Prasad Mukherjee, Babdeo Pandey, Arvind Kumar Singh, Ashok Kumar Jha and Gajendra Kumar Jha, for the Appellant; Chunni Lal, Govt. Pleader for No. 5 and Santosh Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

Hari Lal Agrawal, J.—This application is directed against the order dated 3rd of August, 1977 contained in letter No. 3523 dated 5-8-77 issued by the District Superintendent of Education, Bhojpur, to the Deputy Inspector of Schools, Arrah Sadar, and some other authorities with respect to taking over of some schools under letter No. 4835 dated 30-6-77 of the Regional Deputy Director of Education, Patna; a copy of the above mentioned letter dated 5-8-77 is annexure 1 to the writ petition. The petitioners -- 5 in number -- are all teachers, four being Asst. Teachers and one a Head Mistress of Valika Madhya Vidyalaya, Buxar (hereinafter called the school). Undisputedly, this is an elementary school established in 1968 and was run by a managing committee. The managing committee adopted a resolution dated 25-4-76 to hand over the management of the school along with all the assets including the building, etc. to the State Government. This resolution seems to have been adopted by the managing committee in pursuance of the provisions contained in Sub-section (2) of Section 3 of the Bihar Non-Government Elementary Schools (Taking over of Control) Act 1976, (hereinafter called the Act), which was enacted for the purpose of taking over of all non-Government elementary schools under the State control, for

better organisation and development of elementary education in the State. Section 3, which deals with taking over of the schools, classifies the schools in 3 categories-

(i) schools managed by the District Board, Zila Parishad, Municipal Board and the Patna Municipal Corporation as well as those opened under the Expansion and Improvement Scheme. Such schools were to be deemed to have been taken over by the State Government with effect from the 1st day of January, 1971.

(ii) Aided Elementary Schools run by the managing committees (under which category the school of the petitioners comes). With respect to these schools it was provided in Sub-section (2) of Section 3 that such schools, the managing committees of which have handed over voluntarily their control to the Government, shall be taken over by the State Government from the date which shall be determined by the District Committee referred to in Sub-section (4) of Section 3 for this purpose.

(iii) Elementary schools administered by any public or private undertakings which were to be taken over by the State Government on publication of a notification in the official gazette with effect from the date to be specified therein.

From reading the schemes of Section 3, it is obvious to me that no exception was made by the legislature for excluding any kind of school from being taken over by the Government. In other words, by this legislation the State Government purported to nationalise all elementary schools and to bring them under the State control for better development of elementary education, but simply different procedures were indicated for their vesting in Government. The first category of schools stood vested from a retrospective date, namely, 1-1-71. In respect of the second category the schools were to vest according to the determination by the District Committee and the schools in the third category were to vest according to the date specified in the notification in that regard.

2. Sub-section (4) speaks of District Committee and contemplates a District Committee in each district to examine "the feasibility of taking over of such schools by the State Government". This committee is to consist of the following members-

(1) Deputy Development Commissioner/ Administrator, District Board - Chairman.

(2) District Superintendent of Education-Secretary, Members.

(3) District Education Officers,

(4) District Inspector of Schools,

(5) Sub-divisional Education Officer of the concerned sub-division and

(6) Deputy Inspector of Schools concerned, subject to such changes which the State Government from time to time may make in this regard. "

3. Coming to the facts of the case in hand, the petitioners' case is that after

adopting the resolution the management of the school was handed over to the State Government and the State Government examined in depth whether the school fulfils all the conditions precedent to nationalisation of the school or not and that after consideration of all the factors the Regional Deputy Director, respondent No. 4, issued a letter dated 19-2-77 (annexure 3) informing the Inspectress of Schools-cum-Deputy Director of Education, Bihar, that the school of the petitioners was nationalised from the date of this letter with one trained matric and 10 untrained matric teachers in the prescribed scale of pay, with a further condition that the untrained teachers would get themselves trained in the next training course; certain other conditions were mentioned with which we are not concerned. The petitioners have stated that in consequence of the above letter of respondent No. 4 new service books for the teachers and . staff of the school were opened from 19-7-77 and the District Inspectress of Schools took over the control and management of the moveable and Immovable properties of the school, which is apparent from the letter of the secretary of the school dated 31-3-77 (annexure 5). It is thereafter that the District Superintendent of Education, Bhojpur, respondent No. 5, issued the letter dated 5-8-77 (annexure 1) to the effect that the nationalisation of all those schools which were purported to be nationalised by the letter of the Regional Deputy Director (annexure 3) was postponed. The petitioners have accordingly come to this court.

4. Mr. Shyama Prasad Mukharji appearing in support of the application has argued that once the condition laid down in Sub-section (2) of Section 3 of the Act, was satisfied, namely, that the managing committee of an aided elementary school voluntarily handed over the control of the school to the Government, the control of the school shall be taken over by the Government and the District Committee is to examine only the question of the date from which the taking over of the control by the State Government is to take effect. Mr. Chunni Lal, Government Pleader 5, appearing for the State, on the other hand, argued that Sub-section (4) empowers the District Committee to examine the feasibility of the taking over of such a school by the State Government. The expression "feasibility" according to him means that it is open to a District Committee to come to a conclusion if it finds that it would not be desirable or, for that matter, proper to take over the school at all, then the management of such school may not be taken over by the State Government at all. If this argument of the learned Government pleader is accepted then, apparently, it will give rise to a conflict between the provisions contained in Sub-section (2) and Sub-section (4) of Section 3 of the Act. Mr. Chunni Lal contended that there may be such private schools which may be hopeless and mismanaged or there may be other factors and circumstances which may not justify their taking over by the Government and the District Committee may not find its way for improving the schools or rectifying their defects so as to make it possible to take over such schools even from any future date. There may be some force in this part of the contention. But examining the scheme of the Act as a whole and the apparent conflict between the provisions of Sub-section (2) and Sub-section (4) of Section 3, and

following the well-settled principles of interpretation of statutes of a harmonious construction of the provisions, I hold that the so-called conflict in Sub-section (4) must give way to the provisions of Sub-section (2) as they are the dominant provisions to further the directive principle underlying the scheme of legislation. At this stage Mr. Chunni Lal, however, raised another question, although no counter-affidavit has been filed, that the school of the petitioners was not an aided elementary school. I am deliberately noticing this argument, which may also provide some kind of reconciliation to the alleged conflict as at the time of granting any aid to a school some kind of enquiry is made and once the Government takes any decision to grant aid to any school, it will be presumed that the school is running satisfactorily and, therefore, the District Committee in such cases, namely, in the case of aided elementary schools may not have the jurisdiction to interfere with the scheme of taking over of the school itself. The question might be different where an elementary school happens to be unaided, i.e., wholly a private school having no semblance of any kind of recognition whatsoever. It is well known that there has been a mushroom growth of undesirable educational institutions in the last several years in this State and, therefore, my interpretation of Sub-section (4) must be confined to those elementary schools which are Government aided and not to the entirely privately managed schools. This view, in my opinion, will protect the Government from abuse of its ambitious plans to a great extent and the anxiety expressed by the learned Government pleader will be allayed to a very great extent.

There is some statement in the petition regarding the giving of grants by the Government to the school of the petitioners, but I do not find those averments as sufficient on which it can be safely held that the school in question is an aided school. I would, therefore, hold that if the school of the petitioners happens to be an "aided" elementary school then the respondent concerned must direct the District Committee in question to examine as early as possible -- and preferably within six weeks from the date of receipt of a copy of this order -- the feasibility of taking over of the school by the State Government in the sense that they will determine the date with effect from which the petitioners' school is to be taken over by the State Government and nothing beyond that. If the school is aided then the order contained in annexure 1 will stand quashed and cancelled so far as the petitioners' school is concerned, otherwise it will have its course.

5. Subject to the directions and observations made above, the petition is allowed but without any order as to costs.