
(2016) 07 PAT CK 0050

In the Patna High Court

Case No : Letters Patent Appeal No.173 of 2014, Arising out of Civil Writ Jurisdiction Case No. 16528 of 2012

Rajendra Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 26-07-2016

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 19

Citation : (2017) 1 PLJR 445

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Vishnukant Debey, and Mr. Pranav Kumar, Advocates, for the Appellants; Mr. Sanat Kumar Mishra, AC to AAG-8, for the State

Final Decision : Dismissed

Judgement

Mr. Ahsanuddin Amanullah, J. (CAV) - Heard learned counsel for the parties.

2. The present intra court Appeal under Clause-X of the Letters Patent of Patna High Court has been filed assailing the order dated 22nd August, 2013 passed by the learned Single Bench by which C.W.J.C. No. 16528 of 2012, filed by the appellant has been dismissed.

3. The appellant claims to be the Incharge Headmaster of High School Kotwapatti, Rampur in the district of Saran (hereinafter referred to as the "School"), which is claimed to have been established in the year 1982. In the year 1993, the Deputy Director, Secondary Education, Bihar, Patna wrote to the Secretary of the School by letter No. 2863 dated 27.07.1993 calling for details as per Section 19 of The Bihar Non-Government Secondary Schools (Taking Over of Control and Management) Act, 1981 (hereinafter referred to as the "Act"). It appears that the School was also inspected in the meantime. However, no order granting permission to establish was passed in favour of the School. The appellant, thus, moved before this Court in C.W.J.C. No. 18522 of 2011, which

was disposed off on 25.11.2011 directing the Director, Secondary Education, Government of Bihar to dispose off the claim of the petitioner within a period of three months. Pursuant thereto, the Director, Secondary Education passed order dated 08.06.2012 contained in Memo No. 534 (Vidhi) dated 22.06.2012, rejecting the claim of the School for permission to establish. The appellant being aggrieved by the same moved before the learned Single Bench in C.W.J.C. No. 16528 of 2011 and the order dated 22.08.2013 dismissing the writ petition is under challenge in the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that the School having been established in the year 1982, its case for grant of permission to establish has to be considered under the Act and just because the matter remained pending before the authorities concerned, would not frustrate his claim. It was submitted that there are various inspection reports by the authorities which indicates that the School did deserve such permission for establishment and the respondents, acting in official capacity could not have discriminated against the School. He submitted that a similar School, namely, Usha Rani Uchcha Vidyalaya, Timarpur, Siwan was granted permission to establish under Letter No. 1335 dated 04.03.2008 and the appellant's School being denied the same is also indicative of arbitrariness and discrimination. Learned counsel submitted that though the State may have come out with a resolution contained in Memo No. 538 dated 19.05.2009, not to grant permission to establish non financially aided school, but the same cannot be made applicable in the case of the appellant's School as it cannot be given effect to retrospectively. It was submitted that the action of the respondents is, thus, arbitrary and unreasonable as well as discriminatory and needs to be interfered with.

5. Learned counsel for the State submitted that the contentions raised on behalf of the appellant are misconceived. He submitted that the appellant moved before the Court for the first time in the year 2011 i.e., after coming into force of the resolution of the State Government dated 19.05.2009 and, thus, all matters which were pending, had to be disposed off in light of the said resolution of the State Government dated 19.05.2009. Learned counsel submitted that such position has been clarified by order dated 27.08.2010 in L.P.A. No. 1106 of 2010 (Anil Kumar Jha v. State of Bihar & Ors.) where the Court has negated the contention of the appellant of the said case that the policy decision dated 19.05.2009 could not have been applied to the appellant's School, which was established long before that date and it fulfilled/satisfied all the parameters/criteria existing prior thereto, as such policy decision could be applied prospectively and not retrospectively. The Court held that the policy decision was indeed prospective but in view of the policy decision, since 19.05.2009 no affiliation/recognition can be accorded to any non-government unaided school, the contention was rejected. It was submitted that the said decision of the Division Bench was clarified by the Hon'ble Supreme Court by order dated 04.11.2011 in S.L.P. (Civil) No. 31514 of 2010, which held that all pending applications, as of May 19, 2009, became infructuous.

6. Having considered the rival contentions, we do not find any merit in the present appeal. Admittedly, the matter relating to grant of approval for establishment to the appellant's School never attained finality as no order was passed. The authorities, even if, had made inspection of the School, no final decision having been taken, after the resolution/policy decision of the State Government dated 19.05.2009, such permission to establish could not have been accorded. The appellant also never moved the Court and for the first time, the matter was agitated in C.W.J.C. No. 18522 of 2011. The contention of the appellant that since his case was pending much prior to coming into effect of the policy of the State Government dated 19.05.2009, which was prospective in nature, the case is required to be considered under the Act, has been answered by the Division Bench in the case of Anil Kumar Jha (supra) which has been affirmed by the Hon''ble Supreme Court where, in clear terms, it has been held that all pending applications as of May 19, 2009, became infructuous. The undisputed factual position being that any application which may have been filed by the appellant, remained pending, as on 19th May, 2009, and, thus, became infructuous, and consideration had to be afresh in terms of the Government resolution dated 19th May, 2009. We find that the reasoning given by the learned Single Bench while dismissed the writ application is sound and does not warrant any interference.

7. As far as the issue of discrimination is concerned, no particulars/facts have been brought on record relating to the other School which is said to have been granted such permission. Further, the order passed by the State was in terms of the relevant provisions which existed then, but in the present case, by efflux of time, the law having been changed, inasmuch as a new policy of the State having come into force and the Hon''ble Supreme Court holding that all pending applications, as of May 19, 2009, became infructuous, no relief can be granted to the appellant on that score.

8. In view of the aforesaid, the Letters Patent Appeal, being devoid of merit, stands dismissed.

Hemant Gupta, J.—I agree.