

(1991) 02 PAT CK 0006
In the Patna High Court
Case No : L.P.A. No. 69 of 1990

Rajendra Prasad Sinha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:

Citation : (1991) 02 PAT CK 0006

Hon'ble Judges : S. Roy, J; R.N. Lal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard the learned Counsel for the parties and the appeal is being disposed of at the stage of admission itself.
2. The Appellants, who are said to be teachers of Adarsh Shiksha Niketan, Karbigahiya, Patna, filed C. W. J. C. No. 8692 of 1989 for a writ of mandamus directing the State Government for quashing the order, as contained in the Annexure-6, passed by Respondent No. 2 and for taking over of the school under the provisions of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 (hereinafter called the Act). The writ petition was dismissed. The Appellants have filed this appeal against the judgment of the learned Single Judge.
3. It was submitted on behalf of the Appellants that when the Committee envisaged under Sub-section (4) of Section 3 of the Act in the resolution passed in its meeting on 20th January, 1982, recommended for taking over the school, as contained in Annexure-6, under the Act, Respondent No. 2 had no jurisdiction to sit in judgment over the same and refusing to take over the school.
4. Learned Standing Counsel No. 1 on behalf of the Respondents submitted that Respondent No. 2, in his order, as contained in Annexure 6, had gone to the question of viability of the school being taken over and on the basis of the facts he was of the opinion that the school should not be taken over. In view of this, it

was submitted, the learned single Judge was correct in dismissing the writ petition.

5. In view of the submission made on behalf of the Appellants, we are concerned in this case with Section 3(4) of the Act. We are noticing the same:

3. x x x (4)(a) With regard to the taking over of Elementary Schools other than those mentioned in Sub-sections (1) and (3) there shall be a District Committee in each District which shall examine the feasibility of taking over of such schools by the State Government and which shall consist of the following members:

(i) Deputy Development Commissioner/ Administrator, District Board, Chair-man.

(ii) District Superintendent of Education Secretary.

(iii) District Education Officer.

(iv) District Inspector of Schools.

(v) Sub-divisional Education Officer of the concerned Subdivision, and

(vi) Deputy Inspector of School concerned.

(b) The State Government may, from time to time make changes in the persons of the District Committees so constituted.

Sub-Section (4)(a) provides that writ regard to the taking over of the Elementary schools of the type, as mentioned in the Section (2), there shall be a District Commissioner in each District which shall examine the (sic) of taking over of such school by the State Government. The persons who will be members of such Committee have been (sic) therein.

6. According to the Appellants, the committee envisaged in Sub-section 4 of Section 3 of the Act examined the feasibility (sic) over of the school by its resolution on contained in Annexure-3, and the State Government was bound to act on the same.

7. There is dispute whether the school question is unaided or aided. In view of the order which we are going to paw in this appeal, we are not expressing any opinion (sic)

8. We have already noticed that Section 3(4) of the Act, inter alia, provides that the District Committee shall examine the (sic) of taking over aided school by the State Government. The Committee, therefore is required to take into consideration the relevant facts and record its reasons about the feasibility or otherwise of taking (sic) of a school.

9. From perusal of Annexure-3 WE find only one line resolution was passed by Committee. The proper course which the (sic) should have followed in this case to send back the matter to the District committee for reconsidering the case of takeover of the school in question by taking consideration the relevant facts. We

make it clear that Respondent No. 2 has jurisdiction either to say "yes" or "no" a regard to the taking over of the Schools under the Act.

10. In view of this, we allow this appeal, aside the judgment of the learned single (sic) and dispose of the writ application a direction to Respondent No. 2 to refer to the matter of taking over of the school question to the District Committee (sic) u/s 3(4) of the Act and the Strict Committee shall act in accordance on law, keeping in view the observations and above.