

(1998) 11 PAT CK 0067
In the Patna High Court
Case No : C.W.J.C. No. 7657 of 1986

Rameshwar Jha and Anil Kumar Verma	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 20-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 PLJR 84

Hon'ble Judges : J.N. Dubey, J;A.N. Trivedi, J

Bench : Division Bench

Advocate : Tara Nath Jha, for the Appellant; Jainendra Kumar Sinha, for State, P. Ranjan in 7657, Arbind Ujawal, R.S. Singh for Sanskrit Board, Ram Chandra Jha and Ranjan Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Dubey and Ashish N. Trivedi, J.—Both these writ petitions are directed against the order dated 26.9.1988 of the Respondent No. 2, the Special Director (Secondary Education), Government of Bihar, Patna, allowing the appeal of Respondents 5-11.

2. The case of Rameshwar Jha, Petitioner in the first writ petition, is that Sanskrit Prathmik Sah Madhya Vidyalaya, Jagatpur (for short "the school of the Petitioner") was established on 2.1.1978 and he was made Secretary thereof. On 24.2.1981, he moved an application to the Assistant Director Education (Sanskrit) for short "A.D.E.") for inspection for the school with a copy to the Chief Minister of the State. The Chief Minister Secretariat forwarded the application to the A.D.E. On 10.3.1981, the Sub-Divisional Education Officer, Supaul (for short "the S.D.E.O.") wrote a letter to the Petitioner asking him to explain as to why his school was found closed at 3.30 P.M. on that day when he had gone there for inspection. On 10.3.1981, the Petitioner submitted his explanation and requested the S.D.E.O. to inspect the school on 11.3.1981. The S.D.E.O. inspected the school on 11.3.1981 and submitted his report. On

13.3.1981, the S.D.E.O. sent a letter to the A.D.E. stating that Rameshwar Jha was the Secretary of the school of the Petitioner. The students of the School of the Petitioner have been appearing in the examinations since 1981. On 16.10.1981, the Respondent No. 4, the Secretary, Bihar Sanskrit Education Board informed him that the School of the Petitioner has been granted temporary recognition. On 26.12.1981, the Respondent No. 3, the Chairman, Bihar Sanskrit Education Board, informed him that the temporary recognition granted to the School of the Petitioner has been cancelled by the Respondent No. 1. The Respondent No. 1 constituted one man Commission for examining the records of all the Sanskrit Schools of the State for the purpose of grant of recognition. On 14.2.1983, the Petitioner submitted the record of his school to Respondent No. 4, who transmitted the same to the Respondent No. 2 on 16.2.1983. On 25.3.1985, the Respondent No. 1 granted recognition to the school of the Petitioner. On 11.10.1985, the Respondent No. 4 wrote to the Petitioner to send the list of teachers of his school for approval. The Petitioner supplied the necessary information immediately and requested for payment of salary to the teachers of his school. The Respondent No. 5, Mahabir Jha, who was running Sanskrit Madhya Vidyalaya Goth Barmani Tola Jagatpur on coming to know of the recognition of the School of the Petitioner started claiming that he is the Secretary of the School which has been granted recognition by the Respondent No. 1. He also submitted list of teachers of Ins school for approval and payment of salary. On 10.9.1987, the Respondent No. 3 after considering the case of the parties, Held Mat the Respondent No. 1 had recognised the school of the Petitioner and ordered for taking immediate steps for grant of approval and payment of salary to the staff of his school. On 19.9.1987, the Respondent No. 4 granted approval to six teachers of the School of the Petitioner. The Respondent Nos. 5 to 11 filed appeal to the Respondent No. 2 which was allowed on 26.9.1988.

3. The case of Anil Kumar Verma, Petitioner in the second writ petition, is that the Respondent No. 1 had recognised the school of the Petitioner on 23.3.1985. However, the Respondent No. 5 wrongly started claiming that the Respondent No. 1 had recognised his school. The Respondent No. 3, after considering the claim of both the parties, held that the Respondent No. 1 had recognised the school of the Petitioner. In pursuance of the order of the Respondent No. 3, the Respondent No. 4 accorded approval to him and five other teachers of the school of the Petitioner on 19.9.1987. The Respondent Nos. 5 to 11 filed appeal against the order dated 10.9.1987 which was allowed by the Respondent No. 2 on 26.9.1987. On 1.11.1988, the Respondent No. 4 without affording any opportunity of hearing to the Petitioner, has cancelled his order dated 19.9.1987.

4. On the other hand, the case of the Respondent No. 5 is that he is the Secretary of Sanskrit Prathmik Sah Madhya Vidyalaya, Jagatpur (for short "the school of the Respondent") while the Petitioner, Rameshwar Jha is Secretary of another School of the village. On 3.3.1981, the A.D.E. directed the S.D.E.O. to inspect the School of the Respondent. On 10.3.1981, he after inspecting the

School of the Respondent, submitted his detailed report to the A.D.E. In his report he also stated that after he had completed the inspection of the School of the Respondent, he came to know of the School of the Petitioner which, according to the villagers, was being run in Shri Krishna Bhagwan Temple. He went to inspect the School of the Petitioner. But he neither found any teacher or students nor any establishment of the School there. He tried to contact Rameshwar Jha, Secretary of the School, but did not succeed in spite of his waiting there for hours. He further stated that considering that the population of the village was only 3500, there was no need of Second Sanskrit School there. On the request of the Bihar Sanskrit Teachers Union, the S.D.E.O. also inspected the School of the Petitioner and submitted his report on 26.3.1981, the A.D.E. directed the Regional Deputy Director Education, Koshi Division, Saharsa (for short "the R.D.D.E.") to inspect the School of the Respondent. On 6.4.1981, he inspected the School of the Respondent and submitted his report to the A.D.E. recommending for granting the recognition to it. It was further stated that villagers had told him that Rameshwar Jha was also running a Sanskrit School in the village but that was also not recognised. On 11.3.1981, the S.D.E.O. inspected the School of the Petitioner on the request of the Bihar Sanskrit Teachers Union and submitted his report to the A.D.E. On 29.3.1981 the S.D.E.O. wrote to the A.D.E. that he had inspected the school of the Petitioner in pursuance of the letter dated 28.2.1981 of the Bihar Sanskrit Teachers Union. He further wrote that his inspection report dated 11.3.1981 about the school of the Petitioner was not passed on surprise inspection while his inspection report dated 10.3.1981 about the school of the Respondent was based on surprise inspection and, therefore, the latter can be given recognition. Thus, the controversy of the inspection of schools of the Petitioner and the Respondent ended and the papers for granting recognition of the School of the Respondent were forwarded to the Respondent No. 1. On 23.3.1987, Respondent No. 1 granted recognition to 205 Schools including that of the Respondent. The necessary notification was published in the Bihar Gazette Extraordinary edition on 13.4.1985. On the failure of the Petitioner to get his School recognised, he started claiming that the School which has been recognised by the Respondent No. 1 actually belonged to him. Two separate lists of teachers of the Schools were submitted to the Respondent No. 3-one by the Petitioner and the other by the Respondent No. 5. Thus, the dispute arose as to which of the two schools has actually been recognised by the Respondent No. 1. On 10.9.1987 the Respondent No. 3 without assigning any reason, declared that the School of the Petitioner has been recognised by the Respondent No. 1. The Respondent Nos. 5 to 11 filed appeal to the Respondent No. 3 which has been allowed on 26.9.1987. On 1.11.1987 the Respondent No. 1 cancelled his order dated 19.9.1987 granting approval to six teachers of School of the Petitioner. Since the order dated 19.9.1987 of the Respondent No. 4 was passed in pursuance of the order dated 10.9.1987 of the Respondent No. 3 it was rightly cancelled in pursuance of the order dated 26.9.1988 of the Respondent No. 2. Once the order of the Respondent No. 3 was set aside, the consequential order had to go. This being so, the Respondent No. 4 has committed no mistake

in recalling his order dated 19.9.1987 after the appeal of the respondent Nos. 5 to 11 was allowed by the Respondent No. 2. Since Anil Kumar Verma was not party in the proceedings at any point of time, the question of his being granted opportunity of hearing before passing that order did not arise.

5. Hard learned Counsel for the parties and perused the record.

6. Learned Counsel for the Petitioners contended that Respondent No. 2 was not legally justified in allowing the appeal of the Respondent Nos. 5 to 11 in the facts and circumstances of the case. According to them, the very fact that Gairmajarua land on which the Respondent No. 5 was running the School could not be transferred in favour of a private person was sufficient to prove that the Respondent No. 1 did not recognise the School of the Respondent. Learned Counsel for Anil Kumar Verma further contended that a vested right had accrued in favour of his client by the order dated 19.9.1987 of the Respondent No. 4 which could not be taken away without affording him an opportunity of hearing.

7. On the other hand, learned Counsel for the Respondent Nos. 5 to 11 contended that the Respondent No. 2 has recorded a finding of fact in favour of the school of the Respondent after considering the entire materials on record which could not be interfered with under Article 226 of the Constitution. He also contested the claim of the Petitioners that the land in question was gairmajarua land and that the same could not be legally transferred in favour of a private person. He further contended that Anil Kumar Verma was not a party in the proceedings at any point of time and, therefore, the question of his being impleaded as a Respondent in the appeal did not arise. According to him, the Respondent No. 4 had recognised the services of six teachers including that of Anil Kumar Verma of the School of the Petitioner in pursuance of the order dated 10.9.1987 of the Respondent No. 3 and, therefore, once that order was set-aside in appeal, the consequential order had to go. In other words, the Respondent No. 4 had no option but to recall his order dated 19.9.1987 once the order dated 10.9.1987 of the Respondent No. 3 was set-aside by the Respondent No. 2 on 26.9.1987.

8. Having considered the arguments of the learned Counsel for the parties, we find no merit in these writ petitions. The Respondent No. 2 after considering the entire materials on record in detail has come to the conclusion that the Respondent No. 1 had recognized the School of the Respondent and not that of the Petitioner. This finding is essentially a finding of fact and cannot be interfered with under Article 226 of the Constitution. The point for determination in these writ petitions is whether the Respondent No. 1 has recognized the school of the Petitioner or that of the Respondent and, therefore, the nature of the land on which the Respondent No. 5 was running his school was wholly irrelevant. In other words, even if the land was gairmajarua it is of no relevance for deciding the controversy between the parties.

9. As stated above, the writ petitions are concluded by finding of fact and,

therefore, it is not necessary for us to consider the materials on record. However, we have considered the evidence on record and we are in complete agreement with the Respondent No. 2 that the Respondent No. 1 had recognized the School of the Respondent and not that of the Petitioner. On 3.3.1981 the A.D.E. had directed the S.D.E.O. to inspect the school of the Respondent. On 10.3.1981 he inspected the school of the Respondent and submitted his detailed report to the A.D.E. In his report he had specifically stated that after he had completed the inspection of the School of the Respondent he came to know of the School of the Petitioner which according to the villagers was being run in Shri Krishna Bhagwan temple. He went to inspect the school of the Petitioner, but he did not find any teacher or student there. He also did not find any material from which it could be inferred that any school was being run there. He also came to know that the School of the Petitioner had no place of its own. He tried to contact Rameshwar Jha, Secretary of the School, but did not succeed in spite of waiting there for hours.

10. The S.D.E.O. in his inspection report while making recommendation for recognition of the School of the Respondent had also stated that considering the population of the village no second school was necessary. On 11.3.1981 S.D.E.O. inspected the School of the Petitioner in pursuance of the letter dated 28.2.1981 of the Bihar Sanskrit Teachers Union and submitted his report to the A.D.E. On 26.3.1981, the A.D.E. directed the R.D.D.E. to inspect the School of the Respondent in view of the two conflicting reports of the S.D.E.O. On 6.4.1981 he inspected the School of the Respondent and submitted his report to the A.D.E. recommending for granting of recognition to it. He also stated in his inspection report that the villagers had told him that one Rameshwar Jha was also running a Sanskrit School in the village but it was found closed. On 29.3.1981 the S.D.E.O. wrote to the A.D.E. that he had inspected the School of the Petitioner on 11.3.1981 in pursuance of the letter dated 28.2.1981 of the Bihar Sanskrit Teachers Union. It was further stated that his inspection report dated 11.3.1981 was of no legal consequence as it was not based on the surprise inspection of the School of the Petitioner. On the other hand, his report dated 10.3.1981 about the School of the Respondent was based on surprise inspection. Once the S.D.E.O. himself stated that he inspected the School of the Petitioner in pursuance of the letter dated 28.2.1981 of the Bihar Sanskrit Teachers Union, the claim of Rameshwar Jha that his school was inspected in pursuance of his letter dated 24.2.1981 written to the A.D.E. cannot be accepted. Similarly his claim that on 10.3.1981 he received a letter of S.D.E.O. asking him to explain as to why his school was found closed at 3.30 P.M. on that day when he had gone there for inspection and that he submitted his explanation on the same day and requested him to inspect the school on 11.3.1981 cannot be accepted. According to the inspection report, the S.D.E.O. went to inspect the school of the Petitioner on that day at 3.30 P.M. and on finding no teacher or student there he tried to contact Rameshwar Jha but did not succeed in spite of his waiting there for hours. This being so, the question of his writing letter to Rameshwar Jha on 10.3.1981

asking him to explain as to why his school was found closed when he had gone for inspection, does not arise. It cannot be believed that the S.D.E.O. after returning from the village in the evening of 10.3.1981 could write letter to Rameshwar Jha on the same day and Rameshwar Jha in his turn could submit his explanation on that very day with the request to inspect his school on 11.3.1981. After the letter dated 29.3.1981 of the S.D.E.O. there remained neither any valid inspection report nor any recommendation for recognising the school of the Petitioner. Thereafter, the papers for granting recognition to the school of the Respondent were forwarded to the Respondent No. 1 who recognized 205 School including that of the Respondent. Since there was no proper inspection report or for recommendation for recognising the School of the Petitioner, the question of his school being recognized did not arise. Moreover, the Deputy Director of Education also vide his letter No. 329 dated 19.5.1986 has clarified that the Respondent No. 1 had recognized the School of the Respondent on the basis of the inspection report of the R.D.D.E. and, therefore, the claim of the Petitioners that the Respondent No. 1 has recognized their school cannot be accepted.

11. The claim of Anil Kumar Verma that the order dated 19.9.1987 of the Respondent No. 4 could not be legally cancelled without affording him an opportunity of hearing, is also without any substance. The services of the six teachers including that of Anil Kumar Verma were recognized on the basis of the order dated 10.9.1987 of the Respondent No. 3. The Respondent No. 3 while holding that the Respondent No. 1 had recognized the School of the Petitioner, directed the Respondent No. 4 to approve the services of the teachers of the School of the Petitioner, Once the order dated 10.9.1987 of the Respondent No. 3 was set-aside by the Respondent No. 2, the consequential order had to go. Undisputedly the teachers of the School which has been recognized by the Respondent No. 1 are entitled for salary and, therefore, once it is found that the School of the Respondent has been recognized by the Respondent No. 1, the teachers of the School of the Petitioner have no claim for salary. More-over, Rameshwar Jha has all along been watching the interest of the teachers of his school. In his writ petition also he has prayed for issuing a writ of mandamus directing the Respondents to make payment of salary to the teachers of his school. In our opinion, the fate of the teachers of the two schools was linked with the recognition of their schools and they have no independent rights Since the Respondent No. 1 has recognised the school of the Respondent, the question of the teachers of the school of the Petitioner being paid salary, does not arise.

12. The impugned orders do not suffer from any error, muchless an error apparent on the face of the record which may warrant interference by this Court under Article 226 of the Constitution of India.

13. In the result, both these writ petitions fail and are accordingly dismissed.

No order as to costs.