

(1995) 11 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 112 of 1995 (R)

Sunit Banerjee and Others

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 21-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0037

Judgement

R.N. Sahay, J.—This application under Articles 226 of the Constitution of India has been presented on behalf of the teaching and non-teaching staff of a Middle School popularly known as Bihar State Electricity Board, Sishu Vidyalaya, Kusai Colony, Ranchi. The application has been filed with the object of seeking a declaration that the said School is established by the Bihar State Electricity Board For the sake of brevity "Board" and as such, the teachers and staff of the said School are legally entitled to be treated at par in the matters of salary and other privileges with teachers of other Schools established by the Board. If, the petitioners succeed in getting a declaration that the said School is established by the Board, they are also entitled to the consequential reliefs as indicated above.

2. The claim of the petitioners has been disputed by the Board in the counter-affidavit. The petitioners have annexed several documents in order to establish their claim aforesaid. The relevant facts relied by Shri P.K. Sinha, the Senior Counsel appearing on behalf of the petitioners is stated in paragraphs 4 to 15 of the writ application and the accompanying Annexures-2 to 11.

3. As the claim of the petitioners is based on documents annexed with the writ application it will be convenient to serially discuss those documents.

4. By Annexure-1 dated 28.11.1979, the then General Manager cum-Chief Engineer of the Board wrote a letter to the Secretary that the employees of the colony met the Minister of Power with a proposal for opening of a middle school in the colony. The proposal was sent to the Chairman and it was decided to inaugurate the School on 6.12.1979. The "General Manager further informed that he had provided a temporary accommodation in the colony and plan and

estimated for construction of a middle School will be prepared and sent in due course. The other details regarding quarter and sanction of posts of teachers was also sent. The Chairman was requested to sanction Rs. 20,000/- for necessary expenditures.

By Annexure-2 dated 27.12.1979, the Secretary of the Board issued an office order by which the Board accorded sanction to the establishment of a Middle School and also created two temporary posts i.e. one of Headmaster and other of Assistant teacher. It was further indicated that regular appointments for the post of Headmaster and assistant teacher will be made by the Board. By another sanction order of the same date posts of Mali, Peon and Choukidar was sanctioned on contingent basis. Annexure-3 is the biodata of the teachers/staff who were employed in the Kusai Middle School.

5. The Board vide its resolution No. 4792 decided to hand-over the teaching work and control of the Middle School to St. Burn was Mission School at Ranchi in terms and conditions incorporated in the resolution Annexure-4. By order dated 13.10.1982, the Director of Personnel called for a detailed report from the General Manager-cum-Chief Engineer, South Bihar. A detailed report was sent by the Personnel Officer to the Director of Personnel vide his letter dated 1.2.1983. By Annexure-6, it was decided that the School should be named as Bihar State Electricity Board Middle School, Kusai Colony. Annexure-7 dated 18.1.1989 is the minutes of the proceedings of the meeting held in the office-Chamber of the General Manager cum-Chief Engineer, Kusai colony. The meeting was held by the Principal, teaching staff and guardian and the General Manager of the Board was also present. A decision was taken in January, 1989 that the School will be run through a selected Governing body. The governing body was constituted consisting of the General Manager and others. Annexure-8 is the minutes of meeting of the governing body of the School held on 15.4.1989. In the said meeting, important decisions were taken.

6. Annexure-9 is the minutes of the governing body held on 13.10.1989 in which the question of recognition of the school and other important topics were discussed and decisions taken. By Annexure-10 dated 5.4.1993, in pursuance of the decision taken by the governing body, revised consolidated honorarium per day of the teaching and non teaching staffs were fixed. Annexure-11 is the minutes of the governing body meeting held on 27.5.1993.

7. The Petitioners contend that Sishu Vidyalaya was established by the sanction of the Board, the School is being run in a sub-standard condition because of insufficient grant to meet the necessary expenditure. It is contended that the attitude of the Board is discriminatory in comparison to other Schools of the Board. It is further contended that as per the Rules of the Board, the School under the control of the Board are to be regulated by the Rules of the State Govt. The Rules framed for the management of the School run by the Board provided that the School of the Board are meant for the education of the children of its employees. The Schools are to be governed by the Rules framed for this

purpose and as will be evident the Rules framed by the State Govt. for the Management of the Government School is to be followed in Management of School run by the Board. The Rules as contained in Annexure-12 especially provide that the net expenditure shall be met out of the funds sanctioned by the Board. The sum and substance of the grievance of the petitioners is spelled out in paragraph 22 to 25 of the writ application which for the sake of convenience is being extracted here-in-below:

Para 22: That teachers employed in the School are entitled to get the same salary and pay scale as are being paid to a regular teacher in the Schools run by the Board at Punai Chawk, Patna, Patratu, Barauni and/or the teachers in the Schools are entitled to same salary and pay scale as are being paid by the Govt. Middle Schools in the State of Bihar with all benefits thereof. Denial of such benefits is infringement of Articles 14, 16, 39(4) and 45 of the Constitution.

Para:23: That the Board is acting in an evasive manner and cursorily treating the teachers of its School at Kusai Colony in most arbitrary and capricious manner without considering the case of giving them prescribed pay scale although the decision was taken that it will be departmentally run. It is not understandable as to how inspite of such decision by the Managing Committee, the Board has failed to pay the pay scale of the teachers and non-teaching staff in prescribed pay scale to them with all consequential benefits of conditions of service and non-consideration of the same and continuously paying a meager sum of honorarium for a for a long period and denial of equal opportunity in the matter of employment and equal pay for equal work is violative of the directive principles of the Constitution and is contrary to the established principle of law.

Para 24: That the Board being a statutory and other authority and a state within the meaning of Article 12 of the Constitution cannot deny such facility and obligation towards the children of the employees. There, it is the mandate that the State shall give free education. On the other hand in colourable exercise of power respondent being the President of the Managing Committee has taken decision to charge fees from the students at the range of Rs. 200/- to 300/- which unconscionable and ultravires to the Constitution. Such leaving of charges or fees for admission in the School for imparting education is against the provisions of Article 45 of the Constitution. The Board must provide all facilities for buildings, furniture, books and other ancillary things to impart education to the children of its employees.

Para 25: That there is an attempt by the Board to closed the School and to deny education to the children of the employees of the Board in the Ranchi Town. Contemplating and apprehending such steps by the Board, the guardian's representation made a representation to the Chairman, Bihar State Electricity Board about the high handed action of the authorities in this regard.

8. Before considering the stand of the Board in detail, I feel inclined to agree with the submissions of counsel for the petitioners there is overwhelming

materials brought on record by the petitioners to prima-facie persuade this Court to hold that the petitioners School was established by the sanction of the Board and from time to time the School received grant from the Board but the documents annexed with the writ application to indicate that the School set-up at Kusai Colony, differ from other schools of the Board.

9. Now I turn to the counter-affidavit filed on behalf of the respondent Nos. 1 to 3. The counter-affidavit open with the statements that the Board has no statutory obligation to provide additional facilities to the employees of the Board. This stand is contrary to the argument advanced on behalf of the petitioners that the Board being "State" within the meaning of Article 12 of the Constitution of India cannot act in violation of Articles 36404143 and 45 of the Constitution of India.

Shri Sinha, the senior counsel of the petitioners has cited the following decisions *Randhir Singh Vs. Union of India (UOI) and Others*, These decisions, in my opinion are not of much relevance to decide the controversy in the instant case.

10. Mr. Eqbal, Senior Counsel for the Board has submitted that it is no doubt true that the Board had opened few project Schools at Barauni Thermal Power Station, Patratu Thermal Power Station, for the reasons, there was no educational facilities being located in a remote area. But Middle School at Ranchi was not opened on the same considerations as Schools at Patratu and Barauni". It is further submitted that the petitioners cannot claim the same facilities as is provided to the teachers and staff of the Schools run by the Board at Patratu and Barauni.

11. The extreme stand of the Board is that the School in question has not been established by the Board. It is submitted that the Board agreed to open the school at Punai chak at Patna in view of large numbers of employees concentrated at the place. However, it is submitted that opening of school of Kusai Colony is totally different matter. It was started on the assumption that a large number of students would be available to take admission in the said school at Kusai Colony. This is way the Board started school on experimental basis but only for a period of six months up to 28.2.1980. It was found that the running of school by the Board at Kusai Colony was not a profitable proposition. This is just a vague statement without any material. He is further submitted that the Board revised the earlier decision and agreed to hand over the teaching work and opening of a Middle School to St. Baranabas Mission School, Ranchi on certain terms including lower tuition fee to be charged from the wards of the Board's employees and in turn Board would provide an annual grant of Rs. 35,000/- in instalments provided the numbers of the children goes above 200. However, in my opinion, it is clear that the Board did not lift its control over the School.

12. Shri Eqbal has submitted that the School at Punaichawk, Barauni and Patratu are managed under the direct supervision and control of the Board. The teaching and non-teaching staff of these schools were appointed directly by the Board.

This is not the case with the school in question. This is not being managed by the Board nor their teaching and non-teaching staffs were appointed by the Board. It is submitted that in that view of the matter, the prayer of the writ petitioner is misconceived. The Board, however, concedes that initially there was a proposal that the Board shall make regular appointment of teachers and Head-Master of the School at Kusai Colony but this order was valid only up to 28.2.1990 and therefore, it become ineffective. The petitioners have brought on record the documents to show that even after 28.2.1990. Board exercised control on the Schools. Sri Eqbal stated that this was not true because no appointment was made by the Board even on temporary basis. Mr. Eqbal further submitted that the Board has become financially crippled and is not in a position to run the school at Kusai Colony. It is admitted that the School is on the verge of closure but the Board cannot be held responsible for this. It is further submitted that it is impossible for the Board to render any financial assistance to this School which by no means is a school run by the Board.

Mr. Eqbal submitted as that school at Kusai Colony has not been established by the Board, the petitioners cannot claim the status of staff of teaching and non-teaching of other school run by the Board.

As stated earlier the school was being run by St. Barnabas Mission School on annual grant of Rs. 35,000/- only. The contention of Mr. Eqbal is that the Board has no connection With the school after 1982. This plea of the Board is belied by the statements made in paragraph 25 of the counter-affidavit. We get from paragraph 25 of the counter-affidavit that even St. Barnabas Mission School severed connection with the school. According to the report of the personnel Officer dated 1.2.1983, the school was then being managed by Neta Ji Subhash Educational and Charitable Trust, Doranda, Ranchi. It is worthy to note that even in 1986, there was proposal to change the name of the school as Bihar State Electricity Board, Middle School, Kusai Colony. There was proposal to obtain recognition by the State Govt. but the recognition has not come. Shri Eqbal submitted that according to the prevailing situation, the school is being run by a private management and not by the Board.

13. It is relevant to state that the contention of Shri Eqbal that the Board has no connection with the school is completely negated by Annexure-8 dated 13.4.1989 which is a self speaking document. Annexure-8 is the minutes of the meeting of the Governing body held on 15.4.1989 on the premises of the Sishu Vidyalaya. The meeting was presided but no body else than G.M. Cum-Chief Engineer. In this meeting, important decisions were taken. Increment was granted to the teachers with effect from 1.4.1989. In paragraph 27 of the counter-affidavit, this fact is admitted. The respondents Board has not been able to produce any document to hold that the Board has no control over the school which is being run as a Private school. The contents of Annexure-8 demolishes the argument. The last important document on which the reliance has been placed is Annexure-11 which is the minutes of the meeting dated 25.7.93 held in

the office Chamber of the General Manager cum-Chief Engineer. The meeting was presided over by the General Manager, G.M. cum-South Area Electricity Board, Ranchi and the G.M.C. Transmission, Zone, Ranchi and other senior officers of the Board. It would be worthwhile to reproduce Annexure-11 below:

In the last meeting of the Governing body, General Manager-cum- Chief Engineer has stressed the need for taking necessary action with Regional Director of Education, Ranchi for according non-financial recognition from Government to this school so that student passing from this school can be admitted easily in other Government Schools.

1. APPOINTMENT OF HEADMASTER AND TEACHERS FOR THE SCHOOL: The Committee decided that at present existing teaching staff will be continued in view of critical financial position of the school.

2. ACCOMMODATION PROBLEMS OF THE SCHOOL: The Electrical Superintending Engineer, Ranchi and Executive Engineer Civil will inspect the premises and submit a detailed report for additional accommodation for this school.

3. PREVIOUS ACCOUNTS POSITION OF THE SCHOOL : Shri T.N. Prasad, Treasurer has submitted the Accounts for the period from 01/07/1993 which has been approved by the Committee.

4. INCENTIVE TO THE TEACHERS AND NON-TEACHING STAFF OF THE SCHOOL : The Committee after, due consideration of financial aspect decided to sanctioned additional amount of Rs. 15/- to each teaching and Rs. 10/- to non-teaching staff with effect from 01/07/1993.

5. BUDGET OF THE SCHOOL FOR THE YEAR 1993-1994 : The Committee decided that in the financial year 1994-1995 at the time of admission, a sum of Rs.200/- Rs. 300/- will be collected from each student against admission charge and miscellaneous charge.

6. PROCUREMENT OF FURNITURE OF THE SCHOOL : The Committee has decided that who Nos. of steel almirah will be supplied to the school by the Electrical Superintending Engineer, Ranchi and the Electrical Superintending Engineer, Transmissions Circle one each. For wooden table and chair supplied by the Area Board, it has been decided that the Principal (IC) and Treasurer both will obtain a rate from Toy Development Center, Ranchi and purchases made as per requirement of wooden table and chairs.

7. MISCELLANEOUS : The Bialows of the school prepared by the Committee consisting of Shri B.N. Prasad, Electrical Superintending Engineer, Transmission Circle, Ranchi and Miss R. Lakra, Deputy Director of Personnel, Shri N.K. Verma, Personnel Officer, Ranchi Circle and Shri K.M.P. Sinha, Law Officer, Area Board, Ranchi was placed before the Governing Body. The members of the Governing Body discussed the bye-laws point wise and the same Was approved. It was also decided that the school Secretary and Principal (I/C) of the School will take the matter with District Education Officer, for according early non-financial affiliation.

14. In face of the documents filed on behalf of the petitioners and the contention of Shri Sinha the question is how far the petitioners can be granted relief claimed herein. However, there appears to be much force in the contention of Shri Eqbal that the school run by the Board of Kusai Colony cannot claim the status of the three schools established and governed by the Board. This, however does not mean that the Board can be allowed to leave the school in a lurch after starting it some provisions has to be made for effective running of the school.

The Board has not resolved to close the school, hence so long such decision is not taken, the staff and teachers of the school at Kusai Colony are entitled to get their salary and allowances which they were getting at the time of filing of this case.

15. Shri P.K. Sinha has relied on State of H.P. Vs. H.P. State Recognised and Aided Schools Managing Committees and Others, . The question for consideration in the aforesaid case was as to whether the teachers employed in various recognised aided private schools in the State of Himachal Pradesh were entitled to the pay scale which was paid their counterpart in the Govt. School.

The Supreme Court declared that recognised aided Private Schools are entitled to grant in aid to enable them to pay to the teachers employed by the Schools. It was further held that the teachers employed in such aided private schools are entitled to pay parity and allowances. This decision may not directly apply to the facts and circumstances of this case but this much is clear from the decision, the Board cannot abandon its responsibility by pleadings that they have washed their hands from the management of the school when the documents referred to above speak otherwise. It is not the case of the Board that there are not sufficient number of students warrant employment of teachers. The plea of financial stringency is also of no avail. Judicial notice can be taken of the fact that the Board is running in huge loss due to several factors including over staffing. The Board would incur some expenditure for maintenance of the school so long the school is not closed.

16. In the facts and circumstances of the case, however, no declaration can be given by this Court that the school initially established by the Board at Kusai Colony is at par with other schools managed by the Board at Patratu, Barauni and Punai Chak. The Board should take a realistic view of the matter and consider the claim of the petitioners in the right perspective. The Board shall make all efforts to see the school given respectable status so that the students of the employees of the Board get proper education Bearing this aspect of the matter, the respondent. Board shall consider all aspect of the matter after hearing the petitioners or their representatives and take into consideration all the documents filed in support of the petitioner's claim appended to the writ petition. I may point out that the plea of the respondents that there is no requirement of a school at Ranchi where there are already good schools in abundance holds no good use because if this is the reason there was no necessity of establishing school at Punai Chak at Patna. This may be a policy

matter as pleaded in the counter-affidavit does not appear to be convincing. The petitioners have filed a representation vide Annexure-13 which contains the relevant facts. The petitioners may file supplementary representation annexing copy of the writ application and the counter-affidavit within four weeks from the date of receipt of the certified copy of the order. The Board shall decide the matter within eight weeks of filing of the representation in the light of the observation made in this judgment. I further direct that the teachers and staff are also entitled to receive their salary from the date of filing of the application till the representation is not disposed of. I again reiterate that the Board must do something effective to resolve the dispute which in my opinion is perfectly genuine. This application is accordingly disposed of. There shall be no order as to costs.