

(1989) 03 PAT CK 0032
In the Patna High Court
Case No : C.W.J.C. No. 2303 of 1988

Surendra Prasad and Another	Vs	APPELLANT
State of Bihar and Another		RESPONDENT

Date of Decision : 20-03-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1989 Patna 325 : (1990) 38 BLJR 1 : (1989) PLJR 807

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Ganesh Pd. Singh and Tej Bahadur Singh, for the Appellant;

Judgement

S.B. Sinha, J.—In this writ petition the petitioners have prayed for issuance of a writ of or in the nature of mandamus directing the respondents to issue a notification for taking over the Management and Control of Ragho Saryug Ucchyavidyalaya, Dhurgaon, Madanpur, in terms of Sub-section (3) of Section 3 of the Bihar Non-Government Secondary School (Taking over of Management and Control) Act, 1981 (hereinafter called and referred to as "the said Act").

2. According to the petitioners the aforementioned school was established on 2-10-1980.

3. The petitioner No. 2 is alleged to be the Head Master of the said school and petitioner No. 1 is alleged to be the Secretary of the Managing Committee of the said school.

4. After coming into force of the aforementioned Act allegedly the Managing Committee applied for taking over of the said school. In this connection a writ petition was also filed being C.W.J.C. No. 4725 of 1985. In the said writ petition the State filed a counter affidavit wherein it was asserted as follows: --

" That after receipt of the report of the Controller the file of petitioner's school was placed before the Director, Secondary Education on 2-11-1983 but by that

time an order was received from the Government that no school would be taken over by the Government in Financial Year 1983-84. However, explaining all these things, the file was again placed before the Government to take over the school. The Government of Bihar in Education Department was pleased to pass order to obtain the concurrence of the Finance Department before taking over the institution. Accordingly, the file was sent to the Finance Department and the Finance Department refused and ordered in the light of the Government decision contained in Memo No. 4739 dated 11-5-1983 and directed to submit the same in the next financial year. The file was returned from the Finance Department. And now after decision contained in Annexure 6 to the writ petition the matter is still under consideration of the Government. As soon as the policy will be decided by the Government, the petitioner's case will be considered."

5. According to the petitioners in view of the said assertions made in the counter affidavit, the said writ petition was permitted to be withdrawn by this Court by an order dated 7-1-1986. The said order has been quoted in paragraph 18 of the writ petition.

6. The petitioners have asserted that thereafter various other schools have been taken over by the Government but so far as the said school is concerned, no notification has been issued in terms of the said Act.

7. The learned counsel for the petitioners have drawn my attention to the fact that in a similar writ petition, by an order dated 22-12-1987 a special Board was directed to be constituted by this Court and one month's time was granted to issue necessary notification by an order dated 22-12-1987. According to the petitioners, an application for modification of the said order dated 22-12-1987 was filed by the State but the said application was rejected.

8. The learned counsel for the petitioners, therefore, submitted that it was incumbent upon the authorities of the State of Bihar to consider the case of the petitioners' school for its being taken over in terms of the provisions of the said Act in its proper perspective and issue an appropriate notification for taking over of the said school in terms of the provisions thereof.

9. Section 3 of the said Act reads as follows : --

^ ^ jkT; ljdkj }kjk vjkt dh; ek;/fed fo|ky;ksa dk izcaU/k ,oa fu;a=.k&xzg.k fd;k tkuk A ?a1? fcgkj ek;/fed f" k+{kk cksMZ vf/kfu;e 1976 ?fcgkj vf/kfu;e 25] 1978? rFkk fcgkj ek;/fed f" k{kk cksMZ ?f}rh; la" kks/ku? v;/kns" k 1980 ?fcgkj v;/kns" k la[;k 82] 1980? ds v/khu fcgkj ek;/fed f" k{kk cksMZ }kjk LFkk;h] vkSicfU/kd ;k vkaf"kd :i ls ekU;rk izkIr lHkh vjkt dh; ek;/fed fo|ky;ksa ?/keZ vFkok Hkk"kk ds vk/kkj ij jkT; ljdkj }kjk ?kksf"kr vYila[;d ek;/fed fo|ky;ksa rFkk jkT; ljdkj }kjk ekU;rk izkIr dsUnz&pkfyr] Lo"kkIh rFkk LoRo/kkj d ek;/fed fo|ky;ksa dks NksM+dj ? dk izcaU/k ,o fu;a=.k mDr vf/kfu;e vFkok mDr v;/kns" k es }kjk xzg.k dj fy;k x;k le>k tk;sxk A

?2? jkT; ljdkj jkti= es vf/klwpuk }kjk fofufnZ"V rkfj[k ls ,sls ekU;rk izkIr vYila[;d

vFkok LoRo/kkj d vFkok Lo"kkh ek;/fed fo|ky; dk izcaU/k ,oa fu;a=.k xzg.k dj ldsxh ftldh izcU/k lfefr] U;kl laxe vFkok fuxfer fudk; LosPNkiwoZd fo|ky; ds LokfeRo ;k dCts dh lHkh py ;k vpy vkfLr;ksa vkSj lEifr;ksa ftuds vUrxZr Hkwfe Hkou nLrkost] iqLrd vkSj jftLVj Hkh gksxs ds lkFk fouk "krZ fo|ky; dk izzcU/k ,oa fu;U=.k jkT; ljdkj dks lksi ns A ,sls fo|ky;; dk izcU/k ,oa fu;a=.k&xzg.k ds fy, jkT; ljdkj viuh "krZ fu/kkZfjr dj ldsxh vkSj izca/k ,oa fu;a=.k lksius ds iwoZ mDr "krZ dk vuqiky ,oa f?;kUo;u djuk mDr fo|ky; dh izcU/k lfefr] U;kl] laxe vFkok fuxfer fudk; ds fy, cU/kdkjh gksxk vkSj og fof/kekU; gksxk** A

?3? fcgkj ek;/fed ftyk cksMZ }kjk bl vf/kfu;e ds iz[;kiu dh frfFk ds Bhd iwoZ rd LFkkiuk dh vuqefr izkIr vFkok LFkkiuk dh vuqefr ds fy, vkosfnr ek;/fed f"kk{kk iznku djusokys ,sls fo|ky; ftudh mi;ksfxrk jkT; ljdkj dh utj esa izekf.kr gks vkSj tks bl vf/kfu;e ds iz[;kiu ds rhu o"kksZ ds Hkhrj Hkwfe] Hkou] midj.k] miLdj ,oa Nk= la[;k ds ekeys esa jkT; ljdkj }kjk fu/kkZfjr "krksZ dh iwfrZ djrk gks] dk izcU/k ,oa fu;a=.k&xzg.k] ,slh "krksZ ds lkFk] tks jkT; ljdkj mfpr le>s] jkti= esa vf/klwpuk }kjk dj ldsxh A

,sls ek;/fed fo|ky; esa bl vf/kfu;e ds iz[;kiu ds iwoZ 9 f"kk{k d inksa ds vUnj dk;Zjr f"kk{k dksa ,d fyfid ,oa nks vkns"ikyk dh vgZrk ,oa mi;qZDrk dh tkap bl iz;kstukFkZ jkT; ljdkj }kjk xBr lfefr }kjk dh tk; xh vkSj jkt dh; Isok esa fu;qfDr gsrq ;ksX; ik;s tkus ij fo|ky; dk izcU/k ,oa fu;U=.k&xzg.k ds lkFk mUgsa jkt dh; Isok esa fu;qDr fd;k tk;sxk A

9A. It is not in dispute that the school in question could be taken over only in terms of Sub-section (3) of Section 3 of the aforementioned Act.

10. From a perusal of the aforementioned provision it would appear that no person has a legal right to obtain a writ of mandamus from this Court directing the State of Bihar to issue a notification in terms of the provisions contained in Sub-section (3) of Section 3 of the aforementioned Act.

11. In this case a counter affidavit has been filed on behalf of the State. Paragraphs 5 and 6 of the counter affidavit read as follows : --

"That it is submitted that according to the provisions of the Bihar Non Government Secondary School (Taking over of Management and Control (Amendment) Ordinance, 1985 as made in Section 3(3)(I)(Kha), the State Govt. has decided to take over the management and control of some of the proposed schools which were established before 11-8-80. These schools were to be taken over (by) the Govt. during the Financial year 1988-89.

6. That it is further submitted that about 355 proposed High Schools are to be considered as they were established before 11-8-1980. The criteria for selecting such proposed High Schools during the financial year 1988-89 for the purpose of their takeover is still under consideration of the State Govt., and as such without the decision of the State Govt. in this regard, the Directorate of Secondary education is unable to accord recognition to any such schools. The petitioners' institutions are away from these schools which are to be considered for their

take-over."

11 A. There cannot, therefore, be any doubt whatsoever that Section 3 of Sub-section (3) of the said Act is merely an enabling provision. It is only for the State to consider all aspects of the matter so that the question as to whether the school be taken or not may finally be decided by it. This Court, however, cannot issue any writ of mandamus in this regard as the petitioners have no legal right whatsoever in terms of Section 3(3) of the said Act.

12. However, as mentioned hereinbefore, according to the petitioners the school in question fulfils all the criteria as laid down in the said act for its being taken over.

13. Taking into consideration all aspects of the matter I am of the view that it is just and expedient that the respondents should in view of their assertions in the counter affidavit take into consideration the feasibility of the schools being taken over.

14. It is also expected that the authorities concerned would arrive at an appropriate decision in this regard in accordance with law at an early date and preferably within a period of three months from the date of receipt of a copy of this judgment.

15. With the aforementioned observations and directions this writ petition is disposed of but without any order as to costs.