

(2003) 09 JH CK 0114
In the Jharkhand High Court
Case No : CWJC No. 1011 of 1998 (R)

Surendra Prasad Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 19
Bihar Non-Government Secondary Schools (Taking Over) Act, 1980 — Section 3(3)
Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 433

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.M. Pal, for the Appellant; Anil Kumar Sinha, AG, for the Respondent

Judgement

Tapen Sen, J.—In this Writ Application, the petitioner has prayed for quashing of the order dated 12.3.1998 issued by the respondent No. 3 whereby and whereunder his demand for taking over the School in question has been rejected and it has been ordered that if they apply for recognition of the School as a proprietary School, the same may be considered. The petitioner has further prayed for a direction upon the respondents for reconsidering the matter as, according to him, the school has fulfilled all conditions as far back as in the year 1991. They have further prayed for passing a final order in relation to the taking over of the School retrospectively as an exceptional case.

2. The petitioner is Secretary of the Siksha Niketan High School, Railway Colony, Hatia, Ranchi. He applied for the establishment of the School and by order dated 20.1.1982, the Director, Secondary Education granted permission u/s 3 (3) of the Bihar Non-Government Secondary Schools (Taking Over) Act, 1980 to establish the School with certain terms and conditions vide Annexure 1. The petitioner has stated that the School was initially started in the year 1972 and it was established in the School Building and since then it is running peacefully.

3. On 13.1.1983 a Special Committee inspected and submitted an inspection report on 24.5.1983 (Annexure 2) and from the report, the petitioner has stated that it would appear that save and except land and building, almost all conditions were fulfilled. Accordingly, recommendation was made to make correspondence with the Divisional Railway Manager for transfer of the land and the building so as to enable the Government to take over the School. On 23.5.1987 the Deputy Director directed the Regional Deputy Director of Education to submit lease deed and accordingly, on the same date, i.e., 23.5.1987, the letter was issued enclosing there in the agreement and also contained information that the Government had already given permission. This letter dated 23.5.1987 is Annexure 3.

4. Consequently, on 20.12.1991, an agreement was duly signed for purposes of creating licence of railway land and building in favour of the Education Department, Government of Bihar and for purposes of enabling its being taken over. The aforementioned agreement executed on 25.12.1991 between the Railways and the Regional Deputy Director of Education, South Chhotanagpur Division is Annexure 4.

5. Subsequently, on 31.12.1991, the Divisional Railway Manager, Adra Division requested the Regional Deputy Director of Education to arrange to deposit the dues for the year 1992 and to produce money receipts. That letter is Annexure 5. By another letter dated 12.2.1992, the Regional Deputy Director of Education sent the agreement alongwith Annexure 5 to the Director for passing necessary orders vide Annexure 6. The petitioner has stated that while they were waiting for final orders, the Regional Deputy Director of Education sent a letter on 16.7.1992 informing the petitioner to produce documents showing purchase of scientific equipment worth Rs. 2,500/-. The petitioner also purchased the same. At paragraph 13, petitioner has stated that they fulfilled all terms and conditions but no final order was passed till 12.3.1998. The petitioner has stated that thereafter they again approached the authorities whereafter they were informed that another inspection report dated 23.8.1993 has been submitted and this inspection report is Annexure 9. Upon perusal of Annexure 9 it appears that the Regional Deputy Director of Education reported that the School in question fulfilled all necessary terms and conditions.

6. Even thereafter nothing happened as a result of which the petitioner was compelled to file CWJC No. 1523 of 1996 (R) before the then Ranchi Bench of the Patna High Court and by order dated 4.11.1996 that Writ Petition was disposed off directing the Secretary to pass necessary orders in relation to recognition of the School, if all formalities had been complied with. Other directions were made observing that if some more formalities were to be completed, then the authorities would ask the petitioners to comply within a fixed period and then it was directed that formal order of recognition should be passed but the entire exercise should be completed with three months from the date of receipt of a copy of the order. The order dated 4.11.1996 is marked Annexure 10 to the Writ

Application.

7. Thereafter, the petitioner submitted representation along with a copy of the order, but even thereafter nothing happened which compelled the petitioner to file a Contempt Application vide MJC No. 213 of 1997 (R). Upon receiving notice, the respondent No. 3 passed an order dated 29.4.1997 informing the petitioner that he had requested for the taking over the management and control of the School, but that request had not been accepted since the petitioner had not requested for recognition of the School u/s 19 of the Bihar Non-Government Secondary (Taking Over of Management) Act, 1981. Accordingly, he was advised to file a petition for recognition of the School as a proprietary School. This letter dated 29.4.1997 is marked Annexure 11.

8. After receiving the said letter, the petitioner immediately filed a detailed representation on 4.8.1997 stating that the petitioner's prayer was for taking over of the School and there was no question for recognition and therefore, requested the authorities to pass final orders. Thereafter the respondents were not willing to redress the grievances as a result whereof the petitioner again moved the High Court for modification of the Order dated 4.11.1996 and by Order dated 18.11.1997, the High Court clarified the order vide, Annexure 12 deprecating the attitude of the authorities. Thereafter the petitioner filed a fresh representation on 27.11.1997 (Annexure 13) before the respondent No. 2 along with a copy of the order dated 18.11.1997 passed by the High Court, but came to learn that by order dated 12.3.1998 (Annexure 14), the respondent No. 2 rejected the claim/ prayer of the petitioner for taking over of the School.

9. The petitioner has stated that the action/impugned order is illegal and amounts to unnecessarily harassing the petitioner and since the petitioner fulfilled all necessary conditions, there was no justification on the part of the respondent-authority to pass the impugned order. A supplementary affidavit has been filed wherein at paragraph 2, the petitioner has stated that the stand of the respondents in Annexure 14 to the effect that no School has been take over since 1983 is not correct, because the authorities, themselves had issued a notification on 21.2.1983 whereby and whereunder they took over one Shramik High School, Topapindra in the District of Hazaribagh on and from 21.2.1983.

10. A counter-affidavit, in the instant case, has been filed wherein it has been stated inter alia that after the order was passed on 18.11.1997 by the High Court in CWJC No. 1523 of 1996 (R) (Annexure 12), the matter was placed before the Secretary, who after due consideration, passed the order dated 12.3.1998 which has been impugned in the Writ Application. It has further been stated that the claim of the petitioner for taking over of the School has been rejected because there is no provision in the 1981 act enabling the Government to take, over the management and control of any proposed High School. They have further repeated that since 1983 no proposed High School has been taken over and again in paragraph 12 they have taken a plea that the petitioner has not applied for recognition of the School and in absence of the same no action should be

taken. So far as Shramik School is concerned, they have stated that the same was done in February 1983 before passing of the Act of 1983. After creation of the State of Jharkhand, it appears that the matter was again revived at the level of the Government of Jharkhand. In support of the aforementioned contention, the petitioner has filed a supplementary affidavit on 23.6.2003 wherein a number of letters have been brought on record showing that the appropriate authorities of the Government of Jharkhand, Department of Education has been asking for necessary details and the petitioner has also been approaching them now and then.

11. From the pleadings made in this Writ Application, it definitely appears that the respondent authorities have acted in a manner which cannot be said to be either reasonable or fair. In this case, the learned Advocate General, Government of Jharkhand appeared and took a plea that the agreement as contained at Annexure 4 proves that it is a mere licence which was for a period of 10 (ten) years only as is evident from Clause 20 thereof and the signatories are not State-authorities of Jharkhand. However, this argument does not appeal to this Court, because this was subject-matter of the earlier Writ Application, i.e., CWJC No. 1523 of 1996 (R) and appropriate orders were passed thereof. Additionally now it appears that the petitioner has fulfilled all necessary criteria and the new State and its authorities appeared to be looking into the matter. However, taking note of the judgment passed by a Full Bench of the Patna High Court in the case of Shri Sidheshwar Prasad and Others Vs. State of Bihar and Others, and also a judgment of a Single Judge of the Patna High Court in the case of Ramnath Ram and Ors. v. The State (etc.) reported in 1995 (1) PLJR 359, this Court is unable to issue a writ of mandamus directing the Government to take over the School in question. However, taking into consideration the facts pleaded in this Writ Application, it would be only appropriate and apt to direct the State-authorities to once again look into the matter and pass an order in accordance with law within six weeks from the date of receipt of a copy of this judgment. If the petitioner is able to satisfy and prove that the School fulfills all conditions, then the respondent-authorities will determine the issues in accordance with law.

With the aforementioned observations and directions, this Writ Application is disposed off. There shall however, be no order as to costs.