
(2013) 09 PAT CK 0024
In the Patna High Court
Case No : CWJC No. 13731 of 2012

Taslim Miyan

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2014) 1 PLJR 258

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties. The prayer of the petitioner in this writ application reads as follows:--

An appropriate writ in the nature of certiorari for quashing the order as contained in Memo No. 3154 dated 11.7.12 (Annexure-12) passed by the respondent No. 3 whereby and whereunder the respondent No. 4 is directed to shift the functioning of the Primary School (hereinafter referred to as the school) from Sadauwa Uttar Tola to Sadauwa Thakur Pandey Tola may be issued.

An appropriate writ in the nature of mandamus directing the respondents to allow the completion of construction of the Primary School, at Sadauwa Uttar Tola, which is being constructed at the place selected by the Gram Panchayat may be issued.

2. Learned counsel for the petitioner in support of the aforementioned prayer has submitted that the impugned order passed in view of the observations made in the order of this Court dated 10.12.2010 passed in C.W.J.C. No. 16779 of 2009 is contrary to the spirit of law and specially Sections 22, 47(14) and 73(17) of Bihar Panchayat Raj Act (hereinafter referred to as the Act). In this regard he is of the view that though it is the Zila Parishad under Sections 73(17) of the Act which is authorized to take a decision for establishment of Primary School but the location of such Primary School has to be decided by the Gram Panchayat. Reference in this connection has been made by the learned counsel for the

petitioner to a Government resolution dated 24.9.2001 which according to him vests power only in Gram Panchayat to select the site of the School.

3. On the other hand, learned counsel for the State submits that the writ petition is not maintainable in view of the earlier order dated 10.12.2010 passed in C.W.J.C. No. 16779 of 2009. He has further submitted that the power of establishment including location of a school has been specifically vested in the Zila Parishad and it is the decision of the Zila Parishad which will be binding on Gram Panchayat.

4. Having considered the aforementioned rival submission this Court is of the firm opinion that this writ application has no merit and is fit to be dismissed. It is not in doubt that earlier the same issue had been raised before this Court in C.W.J.C. No. 16779 of 2009 at the instance of one Vikash Rai and in fact the impugned order has been passed with reference to the aforementioned order of this Court dated 10.12.2010 passed in C.W.J.C. No. 16779 of 2009. This Court in the order dated 10.12.2010 passed in C.W.J.C. No. 16779 of 2009 in fact had held as follows:--

Heard learned counsel for the petitioner and for the intervenor.

The controversy in this case relates to construction of a Primary School building and its location.

The location of a school is basically a matter of executive policy and there is no occasion for the Court to sit in the chair of the executive and take other such policy decisions which in any event the executive is in a better position to decide based on ground realities unless there be any statutory violations as noticed in (2001) 10 SCC 75 (Raj Shikshan Prasarak Mandal vs. State of Maharashtra & Others).

Both the petitioner and the counsel for the intervenor have been unable to demonstrate before the Court that any decision had been taken by the Zila Parishad u/s 73 subclause 17, sub-clause (1) with regard to the establishment of the Primary School in question either at the original location where the petitioner wants it or the subsequent location where the intervenor wants it. If, the power is vested in the Zila Parishad, it alone can take a decision for the location of the school. If the construction is then sought to be made at a location other than that resolved by the Zila Parishad, a cause of action may arise to the aggrieved. The application stands disposed with the aforesaid directions.

5. As would be evidenced, this Court on an earlier occasion had gone to hold that it is the Zila Parishad which under Section- 73(17) of the Act which has been vested with power of taking decision of the establishment of a Primary School. In fact in the said order it was also held that if the power of establishment of Primary School is vested in the Zila Parishad. It alone can take a decision for location of the School. The only saving grace, in the aforementioned order, was that if the construction of a School building had been made at a location other

than the place decided by the Zila Parishad, a grievance to this effect could be made. Thus, when in earlier round of litigation the power of Zila Parishad for establishing a School including fixing of its location has been already decided, the same issue should not have been, in all fairness raised by the petitioner specially when the impugned order has been passed in keeping with the observations made in the order of this Court dated 10.12.2010 passed in C.W.J.C. No. 16779 of 2009.

6. This Court, however, in all fairness to the submission of learned counsel for the petitioner must address itself to the core issue and the jurisdiction of the Gram Panchayat alone in selecting the site/location of the School sought to be established under the decision of the Zila Parishad. First of all the power and function of the Zila Parishad has been specifically denied u/s 73, wherein, under 21 sub-headings on different subject the Zila Parishad has been given power to do the needful. For the purposes of this writ application, it is only Section 73(17) which would be relevant and is quoted hereinbelow:--

7. From the reading of Section 73(17)(i) of the Act, it is absolutely clear that the entire power of establishment of Primary and Secondary Schools and its supervision (Anurakshan) is within the control of the Zila Parishad.

8. It has to be noted that not only the aforesaid power and functions of Zila Parishad has been very well defined u/s 73 of the Act but even the power of Gram Panchayat has been very well circumscribed under 31 sub-headings of Section 22 of the Act. u/s 22(XIII) of the Act the power which has been vested in Gram Panchayat reads as follows:--

9. In view of the aforesaid clear statutory provision u/s 73(17)(i) and (v) of the Act read with Section- 22(XIII) of the Act there is hardly any prospect for any speculation that the Gram Panchayat has been vested with the power of establishment of a Primary School or even selecting location thereof. The power of Gram Panchayat is only to arise consciousness towards education in the people as also to play a participatory role in Primary and Secondary Education and ensuring admission and attendance in the Primary Schools.

10. Thus, the submission of the learned Counsel for the petitioner that some clarification was issued by the State Government by way of an executive order on 24.9.2001 prior to enactment of the present Act which came into force on 8.4.2006 has to be only noted for its being rejected. In view of the fact that the Bihar Gram Panchayat Raj Act, 2006 with the aforementioned Section 73 giving power as with regard to establishment of Primary and Secondary Schools has not only been vested in Zila Parishad, the executive instructions dated 24.9.2001 can no longer be said to be in force. This Court therefore must hold that the main plank of submission of learned counsel for the petitioner even otherwise is wholly misconceived.

11. There is also no challenge of the petitioner that such a decision for establishment and selecting the site of the School was not taken by the Zila

Parishad, inasmuch as, the impugned order itself takes note of such decision by the Zila Parishad itself. The relevant portion of the impugned order is quoted hereinbelow:--

12. Having thus found no error in the impugned order, this Court must revert back to what was held earlier in the order dated 10.12.2010 passed in C.W.J.C. No. 16779 of 2009 while laying down law that establishment of School and selection of its site is eventually a matter of executive policy and this Court in exercise of power under Article 226 of the Constitution of India cannot sit in appeal on such a executive decision. As a matter of fact, it is the executive which can take such policy decision based on the ground realities as was earlier held by the Apex Court in the case of Raj Shikshan Prasarak Mandal vs. State of Maharashtra Others reported in (2001) 10 SCC 75. Thus in view of the discussions made above, this Court does not find any merit in this writ application and the same is, accordingly, dismissed with cost of Rs. 5,000/- payable to Patna High Court Legal Services Authority within a period of three months from today.