

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8519 of 2014

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Anil Kumar, S/o Sri Sakaldeo Thakur, resident of village - Kushi Harpur Horil,
P.S. Kanti, District - Muzaffarpur, presently the Secretary of Managing Committee
of Middle School, Kanti Under the District of Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary Primary Education, Bihar Vikas Bhawan, Patna
2. The Principal Secretary, Education Department, Bihar, Vikas Bhawan, Patna
3. The Director, Primary Education, Bihar Vikas Bhawan, Patna
4. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur
5. The District Education Officer, Muzaffarpur, District - Muzaffarpur
6. The District Programme Officer (Establishment), Muzaffarpur, District - Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Aditya Narayan Singh

Mr. Shashi Bhushan Singh

For the Respondent/s : Mr. Sanjay Prasad, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

C.A.V. JUDGMENT

Date: 30-03-2016

Petitioner, claims himself to the Secretary of the Managing Committee of what is known as Middle School, Kanti, located in the district of Muzaffarpur, wants a mandamus to be issued upon the State authorities to take over the Middle School, Kanti with its assets and liabilities, since it satisfies the requirements and the criteria fixed for such take-over and even a recommendation in this regard was made in a meeting, dated 28th of April, 1973. However, since it has not been done, the present writ application has been filed to enforce the recommendation of the District Education Project Committee, as there is failure on the part of the respondent-authorities and such an

act of not taking over, is discriminatory.

Writ application at the threshold is fit to be dismissed, because the petitioner is seeking enforcement of a decision taken more than a four decades and a half ago. Since it is a stale and dead matter, the Court would not like to exercise its discretion on that count.

In addition to that the take-over of such privately managed schools was under a statute, which was Act 30 of 1976 and is known as the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 and the said Act is a complete code and the decisions with regard to such take-over had to be taken at the relevant time. Since such take-over was a one-time exercise and not an on-going exercise, therefore, no mandamus will be issued after more than four and a half decades. The Department of Education had done the necessary exercise at the relevant time in the decade of 1970 and the schools, which were taken over, were duly notified. Even if it is accepted that there was a recommendation or a decision taken on 28th of April, 1973 and despite the same, if the school was not included in the list, the cause of action arose then and the issue should have been agitated in near proximity to the cause of action.

Besides opposing the writ application of the petitioner, on behalf the official respondents, on the maintainability at this juncture, even on the merits of the matter, a statement has been made that an inspection was carried out of the school by the Block Development

Officer, Saraiya and the said report would indicate that the school has no registered land; it does not have any library and teaching equipments and materials; and there is hardly any infrastructure to establish the status or bona fide of the school. The detailed report is Annexure-A to the counter affidavit filed on behalf of the Respondent No. 5, i.e., the District Education Officer, Muzaffarpur.

The State counsel has also drawn the attention of this Court to the similar writ applications moved earlier and the decision rendered on such plea, which are C.W.J.C. No. 15582 of 2009 and C.W.J.C. No. 6582 of 2010, which were decided on 06.03.2013. The Court had rejected the similar plea for a mandamus and the present case, in fact, is no different from those two writ applications in any manner.

Writ application, therefore, has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

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