

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1726 of 2012

IN

Civil Writ Jurisdiction Case No. 13361 of 2006

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Harinandan Prathmik Vidyalaya, Kaushalipatti, through its Asst. Teacher Shri Jagdish Prasad Yadav, S/O Late Saryug Yadav, Resident of Village- Kaubhatipatii, P.S- Prpiti, District- Supaul.

.... Appellant/s

Versus

1. The State of Bihar
2. The Education Secretary, Primary and Secondary Education, New Secretariat, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The District Superintendent of Education, Saharsa.
5. The District Superintendent of Education, Supaul.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Mukund, Advocate

For the State : Mr. P.K. Verma, AAG-5

Dr. Mankeshwar Tiwari, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 21-04-2016

This letters patent appeal under Rule 10 of the Patna High Court has been preferred from the order of dismissal of the writ petition dated 20.07.2012, passed in C.W.J.C. No. 13361 of 2006.

Let it be noted, by the said order another writ petition being C.W.J.C. No. 13905 of 2006 (Adarsh Madhya Vidyalaya, Bishan Vs. The State of Bihar & Ors.) was also dismissed and they had also preferred L.P.A. No. 1546 of 2012

which was dismissed for non-prosecution.

Heard the learned counsel for the writ petitioner-appellant, Sri Anil Kumar Mukund and learned counsel for the State.

The writ petition was filed for a mandamus to the State to take over the writ petitioners' school under the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 (for short the Act). It is stated that having passed the said enactment State Government took over 53500 schools out of about 54,000 schools. This taken over was done immediately after this Act was passed. Out of the 500 schools that were left about 110 were then taken over in the year 1994 and 390 schools were again left. Writ petitioner appellant is one of the schools in the said list of 390 schools not taken over.

The submission on behalf of the writ petitioner appellant is that the State was obliged to take over the schools and accordingly, the Act was passed and mandamus should issue in this regard. The learned Single Judge rejected the contention noticing that in associated matter the Full Bench of this Court had refused against the schools, seeking take over in another matter. The matter was remanded by the learned Single Judge to the State Government to consider the entire



matter and the Government after considering the matter in the year 2006 took a conscious decision not to take over any further schools. The learned Single Judge accordingly, dismissed the writ petition. Hence this appeal.

The first question is, before a litigant seeks writ in the nature of a writ of mandamus, it is obligatory upon his part to show that there is a commensurate legal duty on the part of the State. Sri Mukund took us exclusively through the Act but could not point to a single provision therein which obliged the Government to take over a private school. The schools that are to be taken over are with reference to Section 3 of the Act, which is quoted hereunder :

“3. Taking over of Non-Government Elementary schools by State Government.-

(1) Elementary schools managed by the District Board, Zila Parishad, the Municipal Board, and the Patna Municipal Corporation, and those opened under the Expansion and Improvement Scheme shall be deemed to have been taken over by the State Government with effect from the 1st day of January, 1971.

(2) Aided Elementary schools, the Managing committees of which have handed over voluntarily the control of the

school to the Government, shall be taken over by the State Government with effect from the date which shall be determined by the District Committee referred to in sub-section (4) for this purpose.

(3) Elementary schools administered by any public or private undertakings shall be taken over by the State Government by publication of a notification in the official gazette with effect from the date to be specified therein.

(4) (a) With regard to the taking over of Elementary schools other than those mentioned in sub-sections (1) and (3) there shall be a District Committee in each District which shall examine the feasibility of taking over of such schools by the State Government and which shall consist of the following members:

- (i) Deputy Development Commissioner/ Administrator, District Board- Chairman*
- (ii) District Superintendent of Education- Secretary*

Members

- (iii) District Education Officer,*
- (iv) District Inspector of schools,*
- (v) Subdivisional Education Officer of the concerned subdivision and*
- (vi) Deputy Inspector of schools concerned*



(b) The State Government may, from time to time make changes in the personnel of the District Committees so constituted.



Sub-sections (1), (2) and (3) are types of schools which are automatically taken over. They are all basically related to schools run by local self Government. When we come to sub-section (4) they are private schools. The provision is clear that a Committee has to be formed to examine the **feasibility** of take over. Thus, there is a discretion on the State in the matter of take over. Discretion itself implies one or the other decision. Both of which are correct. Thus, as noticed above, when the State having examined the facts have now taken a decision not to take over any school, it cannot be compelled. The statute does not create a duty and consequently if discretion is exercised on valid considerations it is not open for the Courts to interfere and issue a mandamus in policy matters. It is beyond the powers of the court.

In the counter affidavit filed by the State, the order of the State Government has been annexed. It being a policy decision and there being nothing perverse in the order, we are unable to interfere in the matter. We may also note that under similar circumstances another Division Bench of this

Court in L.P.A. No. 565 of 2013 and analogous appeals have similarly refused to interfere in the matter.

In view of the aforesaid, there being no legal duty on the State to take over and the discretion has not been shown to be perversely exercised there is no ground for interference. Appeal is accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh/-

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