

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.373 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 2314 of 1997**

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1. Sri Jain Kanya Pathshala High School, Arrah, through its President, Sri Ajay Kumar Jain.
 2. Ajay Kumar Jain S/O Late Subodh Kumar Jain President of Appellant No. 1.
 3. Prashant Kumar Jain S/O Sri Ajay Kumar Jain Secretary of Appellant No. 1.
- All are Residents of Mohalla Mahajan Toli No. 1, Arrah, P.S. Arrah Town,
District- Bhojpur.

.... Appellant/s

Versus

1. The State of Bihar through Secretary, Department of Human Resources, Government of Bihar, Patna.
 2. Secretary, Secondary, Primary and Adult Education, Government of Bihar, Patna.
 3. Smt. Kamla Devi W/O Sri Purushottam Singh
 4. Nigam Narayan Sinha S/O Late Birendra Kumar Sinha
 5. Veena Kumari W/O Late Bhairo Das
 6. Ardhendu Shekhar Anand Murti S/O Sri Sidheshwar Dwivedi
 7. Ms. Lakhi Ram Das D/O Late Tinkauri Das
 8. Umesh Kumar Jain S/O Late Bhajan Lal Jain
 9. Maharaj Ram S/O Late Gulati Ram
- Respondents No. 3 to 8 as Teachers and Respondent No. 9 as Peon of Sri Jain Kanya Pathshala High School, Arrah, P.S. Arrah Town, District Bhojpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Umesh Prasad Singh, Sr. Advocate.
Mr. Rajendra Kumar, Advocate.
Ms. Surabhi, Advocate.

For the Respondents no. 1 and 2 : Mr. Ramadhar Singh, GP-25

For the Respondent no. 8 : Mr. Tej Bahadur Singh, Sr. Advocate.
Mr. Gyan Shankar, Advocate.

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)
Date: 16-11-2016**

Heard learned counsel for the parties.

2. The challenge in the present intra-Court appeal is to the order dated 17.05.2013 by which C.W.J.C. No. 2314 of 1997 filed by the appellants has been dismissed by the learned Single Bench.

3. There is a Sri Dev Kumar Jain Educational Trust (hereinafter referred to as the 'Trust'), a Jain religious and charitable trust in the town of Arrah. The trust had established a girls' Middle School known as Shri Jain Kanya Pathshala some time around the year 1907, which was being run by it and was duly recognized by the State Government as a Minority institution. In the year 1970, the trustees of this trust decided to start a girls' High School in the same premises. Accordingly, the High School, named as Shri Jain Kanya Pathshala High School, Arrah (the disputed school) was established by the trust. The premises for running the school was given on lease, under a registered deed, by one Bachchu Lal Jain Estate, Mahajan Toli, Arrah for an annual consideration of Re. 1/-. The lease was initially valid till December 31, 1981 but there was a stipulation that it would be renewed on the same terms and conditions till the school was able to manage its own land and building.

4. An application was made on behalf of the school to the Bihar Secondary Education Board (hereinafter referred to as the



‘Board’) for grant of permission for establishment under the provisions of the Bihar Secondary Education Board Act, 1976, which was then in existence. The application was made by one Yugal Kishore Jain, the Secretary of the Managing Committee of the school. In column 11 of the application form, the description of the founder was given as follows:-

“Having been established by Sri Dev Kumar Jain Education Trust and being run in the building provided by Shri Bachchu Lal Jain.”

5. Column 12 of the application related to the character of the school and asked about the person or committee who wished to establish the school. In this column of the application, it was stated that the school was being run by the Jain community which constituted a religious minority. Column 4 of the application asked whether there were any other schools within five miles of the proposed school; in case the answer to this query was yes, as it was in present case, column 5 required the applicant to state the object and need for the proposed school. Against this column it was stated.

“Increase in population and the need for the growth of education.”

6. The school was granted permission for establishment and the Board’s decision in this regard was



communicated by the Board's Secretary under memo no. 21626-30, dated 16.11.1979. In this letter, the Secretary of the school was asked to apply for permanent recognition with requisite fee etc. after removing the deficiencies and short coming pointed out in the letter. Thereafter, the District Education Officer, Bhojpur by his letter dated 22.5.1980 addressed to the Assistant Secretary of the Board, informed that the school fulfilled all the conditions in that regard and accordingly made a recommendation for the grant of permanent recognition to it by the Board. The matter of grant of recognition to the school was still pending when the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 (herein after referred to as the 'Act') came into force and the State Government issued the notification dated 7.8.1981 granting permanent recognition to the school and simultaneously taking it over in terms of section 3 (3) of the Act. This notification was followed by its consequential notification dated 19.10.81 whereby the services of nine teachers, one clerk and two orderlies listed in the notification, were recognized and taken over by the State from the date of the take over of the school. As noted above, the appellants challenged the aforesaid two notifications before this Court in CWJC No. 4515 of 1981. Shortly after the issuance of the aforesaid notifications, the appellants also moved the Government on



06.11.1981 for recognising the school as a minority institution. The appellants' application was forwarded by the District Inspectress of School, Bhojpur to the Director, Female Education-cum-Special Secretary, Education Department under her memo no. 1307 dated 16.11.1981. While the appellants' writ petition challenging the Take Over notification was still pending before this Court, the application for the grant of minority status to the school was turned down by the Government by order dated 30.10.1982 passed by the Director, Secondary Education. This was a non-speaking order and merely stated that the Government had rejected the proposal to declare the school as a minority institution.

7. Finally, this Court by judgment and order dated 16.01.1986 allowed CWJC No. 4515 of 1981, quashed the two impugned notifications and directed the appropriate authorities to make a proper enquiry into the question of the character of the school.

8. Even after the judgment of this Court in CWJC No. 4515 of 1981, due to the unwarranted interference of the respondents in the affairs of the school, the appellants filed MJC No. 324 of 1987 praying to initiate a proceeding of contempt against the respondent authorities. The aforesaid contempt petition was however, dismissed by order dated 2.11.1987.



9. As the respondent authorities failed to carry out the direction given by this Court to have an enquiry made, with regard to the character of the school, the appellants once again came to this Court in CWJC No. 2472 of 1988 seeking a direction to the authorities to hold the enquiry and to determine the nature and character of the school. This writ petition was disposed off by order dated 26.05.1988. In this order it was noticed that this Court had earlier directed the State Government to examine the minority character of the school and then to pass necessary orders in regard to its take over but no action was taken by the Government despite lapse of more than two years. The authorities of the Education Department were accordingly directed to positively and definitely decide this question within a month from the date of the order.

10. Following the order, the Director, Secondary Education heard the parties and by a detailed order dated 5.8.1988 came to the finding that the school in question was established and was being administered as a minority institution. It was however, noticed that the school did not fulfil the conditions regarding land and building and hence it was directed that it would be deemed to be a school only with the permission for establishment and it would be granted recognition, including recognition as a minority school, only after the managing committee fulfilled the conditions regarding land

and building.

11. It appears that such finding that the school had been established and was being administered as a minority institution was not acceptable to the Government and hence the Government directed further enquiry in the matter. In pursuance to this, an officer of the rank of Deputy Director held a spot inspection on 31.1.1992 and in his report dated 3.2.1992, he expressed his opinion that the school was not a minority institution but it was established as a general school and hence it could only be declared as having been taken over by the State. The impugned notification dated 31.1.1994 appears to be primarily based on this inspection report and incorporates many of the reasonings and arguments contained in the report.

12. The notification dated 31.01.1994 was challenged by the appellants in C.W.J.C. No. 1896 of 1994 and by judgment dated 22.07.1996, the Court finally held as under:

“19. I am, therefore, of the considered opinion that in holding the enquiry on the question of the character of the school, the authorities completely misdirected themselves and based on their finding on reasons which are wholly untenable in the eye of law.

20. At this stage, I would like to refer to the Government circular, dated 20.1.1969 on the subject of declaration of high/higher secondary schools as established and administered by minority based on religion or language. In my opinion, this circular lays down

the correct guide lines for determining the minority character of a school and the authorities will be well advised to re-examine the case of this school in the light of what is stipulated in paragraph 2 (2) and 4 of this circular letter. The contents of paras 2(2) and 4 are as follows:-

“2 (2). In order to claim its protection under Art. 30 (1) of the Constitution, the application will have to establish two conditions, namely, (1) it is religious or linguistic minority (ii) that the institution is established and administered by it.

“ 4. It will not be necessary, however for the institutions to fulfil any of the conditions below:-

(i) that the institution is to be established donations of money or property by the minority community itself. The minority community may raise donations from any source and establish and administer the institution.

(ii) That a particular number of students belonging to the minority community shall have to attend the institution.”

For the reasons stated above, I am satisfied that the finding arrived at on the basis of the enquiry conducted in this case is fit to be set aside and the matter requires interference by this Court. I accordingly direct the Education Secretary, Government of Bihar to have a fresh enquiry made in this matter, in the light of the direction and observations made above and to take a fresh decision with regard to the school by December 31, 1996. At this stage, I may observe that normally I should have quashed the impugned notification contained in Annexure-1 but it has come on record that the petitioners had instituted Civil Suits (which were later withdrawn) seeking a declaration regarding the minority character of the school and some other consequential reliefs. It is further stated in the intervention petition that the civil Court declined to grant any interim



injunction in those suits. In that view, I refrain from quashing the impugned notification at this stage. This, however, would not give a licence to the State to delay the enquiry and to carry on on the basis of the impugned notification. The State must hold an enquiry, take a decision and pass an appropriate order in accordance with law within the time as directed here-in-above. In case the State fails to pass a fresh order by 31.12.1996, the impugned notification as contained in Annexure-1 will stand quashed with effect from 1.1.1997. In order to facilitate an early disposal of the matter, the petitioners are directed to appear before the Secretary, Secondary, Primary and Adult Education, Bihar, with a certified copy of this order by August 12, 1996.”

13. Pursuant to the order of the Court, the Secretary, Secondary Primary and Adult Education, Government of Bihar, Patna passed order dated 30.12.1996 declaring the appellant no. 1 as a general category school and not a minority institution. The same was impugned by the appellants in C.W.J.C. No. 2314 of 1997 and dismissal of the writ petition by the learned Single Bench by order dated 17.05.2013 has given rise to the present Letters Patent Appeal.

14. Learned counsel for the appellants submits that right from the beginning, the authorities have misdirected themselves inasmuch as the basic reason for not giving the status of a minority institution to the appellant no. 1, is that in none of the Government communications it has been referred to as a minority institution, which is totally erroneous, as the Trust which has set up



the school was a Trust run by the Jains, who are a minority community and even in the form submitted for grant of approval/recognition to the Government on behalf of the Trust which ran the school, in column 11 it was clearly written as “having been established by Sri Dev Kumar Jain Education Trust and being run in the building provided by Sri Bachulal Jain” and in Column-12 of the application it was stated that the school was being run by the Jain Community which constituted a religious minority. Thus, when the initial foundation was laid and matter initiated, by application being made on behalf of the school to the Board for grant of permission for establishment under the provisions of the Bihar Secondary Education Board Act, 1976, clearly, two things were specifically mentioned, first, that the school was established by Sri Dev Kumar Jain Education Trust and secondly, that it was being run by the Jain community, which constituted a religious minority. It has been submitted that the reply at Column-4 of the application is being read out of context by the authorities inasmuch as it asked whether there were any other schools within five miles of the proposed school and in case the answer to this query was yes, as it was in the present case, column-5 required the applicant to state the object and need for the proposed school. Against this Column, it was stated “increase in population and the need for the growth of



education”. It was submitted that the test of institution being a minority, as has rightly been discussed in the order of the Division Bench of this Court in C.W.J.C. No. 1896 of 1994, has to be made in light of the law settled by the Courts relating to the right under Article 30 of the Constitution of India of the minorities to establish and administer educational institutions of their choice, is not confined to the teaching of religion/language/culture only of the religious/linguistic minority and also that there is no limitation on the subject to be taught in a minority institution or even that the majority of the students should belong to the minority in question and further, that it was also not necessary that the institution should be established for the benefit of a particular religious minority. It was submitted that the authorities were required to test the request of the appellants’ school for being recognized as a minority institution in terms of the Government circular dated 20.01.1969, which dealt with the subject of declaration of higher secondary schools and administered by minority based on religion or language and the appellant school did satisfy the conditions for being accepted as a minority institution. Learned counsel submitted that the order impugned in the writ petition dated 30.12.1996, is in the teeth of the discussions made by the Court in its order dated 22.07.1996 passed in C.W.J.C. No. 1896 of 1994, since it has only taken into



consideration the reports of the authorities which do not deal with the issue in the correct prospective and after ignoring the findings given by the Court in its order as to how the question should be considered. It was further submitted that the initial order passed by the Director (Secondary Education)-cum-Joint Secretary dated 05.08.1988, which was passed in terms of the earlier order of the Court dated 26.05.1988 passed in C.W.J.C. No. 3472 of 1988, was given a complete go bye, which is impermissible. It was submitted that it is apparent that vested interest of some teaching and non-teaching staff of the school for their personal benefit and in connivance with the officials had succeeded in setting up a false claim leading to the passing of the order by the authorities. It was submitted that the said order is patently illegal, both in law as well as on facts.

15. Learned counsel for the State and the respondent no. 8, submitted that the order impugned dated 30.12.1996 has considered all aspects and cannot be said to be legally infirm.

16. Having considered the rival contentions, we find merit in the submissions of learned counsel for the appellants. The order impugned in the writ petition is based primarily on the following points:

(i) That the order of the Board dated 16.11.1979 shows



that the authority had granted permission for establishment to run the aforesaid school as a general school and not as a minority school inasmuch as the administration of the school was not vested with the Managing Committee of the school in the matter of appointment of teachers and Headmasters of the school and had the school being granted permission with a view to be run as a minority school, the aforesaid condition would not have been placed.

With regard to the said contention, we find the same to be misconceived as Clause-2 has to be read as continuation of the opening paragraph in which it was stipulated that there being no untrained teacher working and if any are un-trained, the same should be removed and more importantly that “ in future such appointment be not made and if the same happens then permission to establish would automatically come to an end”. In the aforesaid background Clause-2 only specifies that the Headmaster and other teachers would be appointed on the recommendation of the Commission and direction given by the Competent Officer of the Board. Thus, the same does not prove that the permission was given for establishment of the school as a general school and not a minority school.

(ii) The second point in the impugned order was that a report was submitted treating the institution as general institution in terms of the District Education Officer's Letter No. 536 dated

22.05.1980, stating that the institution does not possess any land or building as envisaged as an essential condition for general Government schools for recognition, which was not disputed by the school authority.

Such conclusion is also not sustainable for the reason that even a school run by any minority has to fulfill the parameters which are applicable to any other school since the same standard has to be applied across the board with regard to the infrastructure of school, the only difference being that the Management of such school would instead of being in the hands of the authorities, would be in the Managing Committee of the concerned Minority. The requirement of land, building and other essential conditions is with regard to fulfilling the standard for grant of permission to open and run the school and clearly such condition cannot be said to be related to or indicative of the minority character of such institution. The impugned order at Clause-3 mentions the taking over of the school under notification dated 07.08.1981 followed by the notification dated 19.10.1981 of recognizing the service of teaching and non-teaching staff only for payment of salary and which also cannot be a ground since the said notifications already stand quashed.

(iii) In Clause-4, it is stated that the Managing Committee was registered under the Societies Registration Act on

05.01.1982 and thereafter request was made to declare the institution as a minority institution, which was rejected by order dated 13.10.1982.

Such contention is also erroneous since the registration of the Managing Committee under the Societies Registration Act, 1860 on 05.01.1982 will not change the nature of the institution inasmuch as right in its initial application in the year, 1979, it was clearly stated that it has been established and run by the Jain Minority Community and thereafter if a formal registration under the Societies Registration Act, 1860 has been done at a later date, the minority character cannot be said to be lost or the school having not acquired such minority character earlier.

17. Surprisingly, the order at Clause-7 accepts that the Director, Secondary Education, after hearing the parties, had passed the order dated 05.08.1988 in which he has come to the conclusion that the aforesaid school possessed the character of minority institution. However, the further portion of the same order stating that the school did not fulfill the conditions regarding land or building and the school shall only be granted recognition as a minority school after the condition of land and building are fulfilled, have gone totally unnoticed.

Thus, such finding in the order dated 05.08.1988

appears to have been misconstrued by the State Government as there was a clear cut finding that the school possess the character of minority institution but recognition as a minority school was made subject to the removal of deficiency relating to land and building.

18. Moreover, the authority has relied upon the report of the Deputy Director dated 31.01.1992, which also is based on conjectures and surmises, and this report has been the basis of the report of the District Magistrate, which in turn is the basis of the order impugned dated 30.12.1996. Most of the contentions being raised time and again on behalf of the State authorities have been appropriately answered by the Division Bench earlier in its order dated 22.07.1996 in C.W.J.C. No. 1896 of 1994. The relevant portion reads as under:

“14. Now, it is the appropriate stage to examine the reasons assigned in the impugned notification for holding that the school is not a minority institution. The notification assigns the following six reasons for this findings:

(i) In the application submitted by the Secretary on 01.06.1977, seeking permission for establishment, the object and need for the establishment of the school was stated as “increase in population and the need for the growth of education. It was further stated (in the application) that the girls of the nearby villages would benefit from the school. Though the school was stated to be administered by the Jain Community, it was nowhere mentioned that the school was established for the upliftment of Jain religion and its followers. In the memo dated 16.11.79 by which the school was granted

permission for establishment, it was not described as a minority administered school, rather the permission for establishment was accorded on conditions applicable to a general private school. No request was made, at any time, by the managing committee to recognize the school as a minority institution;

(ii) In the letter dated 22.05.1980 wherein the District Education Officer made the recommendation for granting permanent recognition to the school, there was no mention of its minority character;

(iii) In the lease executed for the land and building vide document no. 2333, dated 22.03.1981 and in the affidavit dated 23.04.1981 sworn by the school's secretary, there was no claim or mention regarding the minority character of the school;

(iv) prior to the take over of the school by notification dated 7.8.1981 no claim or application was made for the recognition of the school as a minority institution in the light of the guide lines issued in the department's letter no. 230 dated 20.1.1980;

(v) The Secretary of the school for the first time made an application for recognizing the school as a minority institution on 27.10.1981. This was rejected by the Government by order dated 19.10.1982; and

(vi) The school was established by a managing committee the members of which were mostly Jains but not all members belonged to Jain community. The school got permission for establishment and permanent recognition from the Government by the efforts of a managing committee which itself did not intend to establish and administer the school as a minority institution of the Jains and they obtained the necessary permission from the Government as if the school was a general school. The claim that the school was a minority institution was made only after its take over by the Government.

15. I have carefully perused both the report dated 3.2.1992 and the impugned



notification dated 31.1.1994 and I am far from satisfied by the reasons assigned for holding that the school was not a minority institution. Some of the reasons suffer from factual inaccuracies, others betray a misconception in the mind of the authorities regarding the nature and scope of the right under Art. 30 of the Constitution and still others are not germane to the issue. At serial No. (i) it is stated that the professed object and need for the establishment of the school was the increase in population and the need for the growth of education and it was not mentioned that the school had been established for the upliftment of the Jain religion and its followers. In the first place, it was quite unfair to extract, out of context, the statement made in column 5 of the application and to completely ignore the statements made in the application against the columns relating to the description of the founder and the character of the school where it was clearly stated that the school was being administered by the Jains who constituted a religious minority.

16. As regard the objection that there was no mention that the school was established for the upliftment of the Jain religion and its followers. It appears to me to be based on a common mis-conception that the right under Art. 30 is confined to the teaching of religion/language/culture only of the religious/linguistic minority. This question was settled by the Supreme Court as early as in the Presidential Reference on the Kerala Education Bill, A.I.R. 1958 s.c. 956 and has been consistently followed thereafter. In that case the Supreme Court laid down that there was no limitation on the subject to be taught in a minority institution and the minority communities were not debarred from giving general education as well in an institution established by them. It was also not a condition for the protection of Art. 30 that the majority of students belonging to the institution must belong to the religion of the minority in question. It was also not necessary that the institution should be established "for the benefit"

of the particular religious minority.

17. As regards the objection that an application was made for the first time only after the school's take over by the Government by the notification dated 7.8.1981, it may be noted that the question of the minority character of the institution assumed importance and urgency only after the State tried to take it over. Before the coming into force of the Take Over Act, there was no threat and hence there was no urgency for the petitioners to get the school recognized as a minority institution and it was not unreasonable for them to proceed on the basis that the recognition would come in due course.

18. I am further of the view that it is not quite reasonable to say that the school is not a minority institution because it is not so described in the various reports and orders passed by the different Government functionaries. However, the petitioners be held responsible in case the school was not described as a minority institution in the reports and orders of which they were not the authors? However, if the orders passed by the officials were to be taken into consideration then the very detailed order dated 5.8.1988 passed by the Director, Secondary Education should also have been considered."

19. Thus, from the entire reading of the order impugned dated 30.12.1996, we find that though the Court in its order dated 22.07.1996 had clearly indicated that the consideration for declaring the school as establishment and administered based on religion or language had to be decided with reference to Government Circular dated 20.01.1969, which admittedly has not been done as, in spite of the same being noted in the initial portion of the order impugned, has neither been considered nor dealt with.



20. In view of the discussions made hereinabove, in our considered opinion, we find that the order dated 30.12.1996, declining to declare the appellant school as a minority school and holding it to be a general category school cannot be sustained and is accordingly, quashed. Normally, the Court would have remanded the matter to the authorities for reconsideration, but in the background of repeated consideration by the authorities pursuant to quashing of the notifications of the Government twice earlier also, we find that there has been total misdirection by the authorities and, thus, we do not see any ground to once again send the matter back to the authorities moreso, for the reason that after perusal of the materials on record, we find that the appellant school satisfies the criteria for being recognized as an institution established and run by the Minority Jain Community.

21. Accordingly, the Letters Patent Appeal stands allowed. The order passed by the learned Single Bench dated 17.05.2013 in C.W.J.C. No. 2314 of 1997 is set aside. The order dated 30.12.1996 passed by the Secretary, Secondary Primary and Adult Education, Government of Bihar, Patna as contained in Letter No. 536 dated 31.12.1996 is quashed and the writ petition stands allowed. The appellant no. 1 school is held to be a school established and managed by the Minority Jain Community. The

school shall be entitled to all consequential benefits flowing out of it
being held to be such an institution.

(Ahsanuddin Amanullah, J)

Hemant Gupta, ACJ *I agree*

(Hemant Gupta, ACJ)

P. Kumar

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