

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1834 of 2012

IN

Civil Writ Jurisdiction Case No. 15967 of 2008

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1. The State of Bihar
 2. The District Superintendent of Education (Now District Programme Officer, Establishment), Sitamarhi.
 3. The District Magistrate, Sitamarhi
 4. The Regional Deputy Director of Education (Primary Education) Tirhut Division, Muzaffarpur.

.... Appellants

Versus

1. Ram Nath Roy S/O Late Ram Palton Roy R/O Village-Jai Nagar, P.O.-Bandar Jhulla, P.S.- Sonbarsa, District- Sitamarhi, At Present Ram Padarath Nagar, New Bus Stand, By Pass Road, Chak Mahila, Sitamarhi
2. Managing Committee/Adhoc Committee of Marwari Middle School, Sitamarhi, through its Secretary namely Kapileshwar Paswan, son of Nathuni Paswan, resident of village – Thathopur, P.S. – Baheri, District – Darbhanga.
3. Ram Babu Sah S/O Late Gena Sah R/O Village-Bela, Majh Pakauni, P.S.-Bela, District- Sitamarhi, At Present Laxmi Nagar, Mehsaul Goat, Dumra, Sitamarhi.

.... Respondents

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Appearance :

For the Appellant/s : Mr. P.N. Shahi, A.A.G.-10

For the Respondent/s : Mr. Vinod Kumar, Advocate

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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: 29-03-2016

Heard the parties at length including the writ petitioner, who was respondent no. 1, and the Managing Committee, who were also respondents in the writ proceedings, and with their consent, this appeal is being disposed of at this stage itself.

2. State, being aggrieved by the judgment and order dated 23.03.2012 passed in C.W.J.C. No. 15967/2008 (Ram Nath Roy Vs. State of Bihar and others), has filed this Intra-Court Appeal.

3. By the aforesaid order, the learned Single Judge has set aside the order passed by the District Superintendent of Education, Sitamarhi, being order dated 14.05.2008, whereby the writ petitioner and contesting respondent in this appeal namely, Ram Nath Roy, was sought to be removed from the post of Acting Headmaster of Marwari Middle School, Sitamarhi. The learned Single Judge held that the District Superintendent of Education had no business to interfere in the matters of government aided private school i.e. Marwari Middle School, Sitamarhi. The learned Single Judge further observed that strict disciplinary action be taken against the District Superintendent of Education for exceeding jurisdiction in this regard. In fact, in the said writ petition i.e. C.W.J.C. No. 15967/2008, not only the order of the District Superintendent of Education, Sitamarhi, was under challenge, but the fight was between Ram Nath Roy, the writ petitioner/respondent



herein and one Ram Babu Sah, who was sought to be installed as Headmaster.

4. Sri Puskar Narain Shahi, learned A.A.G.-10, in support of the appeal by the State, has raised a preliminary issue. He pointed out that the writ petition was filed in the year 2008. The writ petitioner was fully aware that another set of writ petition was pending in this Court being C.W.J.C. No. 446/2005, in which not only the writ petitioner Ram Nath Roy, but Ram Babu Sah and one Birendra Kumar Jain were parties and each was contesting to hold the post of Headmaster to this very school.

5. While the writ petition being C.W.J.C. No. 15967/2008 was pending, C.W.J.C. No. 446/2005 was heard and allowed by judgment an order dated 19.09.2008. Against which State had preferred a Letters Patent Appeal, being Letters Patent Appeal No. 1036/2009, in which again Birendra Kumar Jain, Sri Ram Nath Roy, the writ petitioner in the present writ petition under appeal and Sri Ram Babu Sah were all parties and had been heard. This Letters Patent Appeal was taken up on 11.02.2010. There were applications for



condonation of delay being I.A. No. 5049 of 2009 in the said Letters Patent Appeal, which was allowed. Thereafter, the Letters Patent Appeal by the same order dated 11.02.2010 was disposed of directing the Commissioner-cum-Secretary to see that the post of Headmaster of Marwari Middle School, Sitamarhi, is filled up as per norms and rules in vogue within a period of two months. This order in Letters Patent Appeal was passed on 11.02.2010 in presence of the present writ petitioner/respondent herein. This, he did not bring to the notice of the writ court. It is pursuant to this direction of the Division Bench in the Letters Patent Appeal that the Principal Secretary, Department of Human Resources, Government of Bihar, passed an order on 10.06.2010, holding that as per government decision, the qualification for Headmaster of a Middle School being post-graduate, Ram Babu Sah was the only competent person to be considered for the said post, meaning thereby, that the writ petitioner Ram Nath Roy, who was merely graduate, could not be considered for the post of Headmaster. This order was again known to the writ petitioner Ram Nath Roy, on that date, his writ





petition being C.W.J.C. No. 15967 of 2008 was pending in this Court. Neither he brought it to the notice of this Court nor has he ever filed any application or took any step to challenge the order of the Principal Secretary dated 10.06.2010. This order of the Principal Secretary had, thus, attained finality while disqualifying the writ petitioner from holding the post of Principal.

6. In our view, it was incumbent upon the writ petitioner/respondent, Ram Nath Roy, to bring this order to the notice of this Court and without assailing this order which was a subsequent event during pendency of the writ proceeding, the writ proceeding could not have been finally disposed of.

7. To us, that was fatal to the writ petition. The order of the Deputy Superintendent of Education was nothing, but same as the view taken by the Principal Secretary, pursuant to the direction of this Court. The writ petitioner has suppressed the said order, and has deliberately concealed in the writ proceedings, and is thus liable under the principles of *suppressio veri; suggestio falsi*, disentitling him to any relief in the writ proceeding.



8. We would, thus, hold that the writ petition, which was pending, having not been amended to assail the order of the Principal Secretary, which order, holding that writ petitioner was not entitled to the post of Headmaster, could not have been finally heard and disposed of, and having been done so, it ought to have been dismissed, as noted above.

9. Even today, the order of the Principal Secretary is not being assailed. Learned counsel for the writ petitioner/private respondent and the Managing Committee contended that the order has been passed with reference to Interlocutory Application No. 5049 of 2009. This argument is noted only to be rejected. If we see to the entire order dated 11.02.2010 passed in Letters Patent Appeal No. 1036 of 2009 (Annexure-10 to the Letters Patent Appeal), Interlocutory Application aforesaid is an application for condonation of delay in the Letters Patent Appeal, wherein, subsequently, order has been given to adjudicate upon the matter, to the State Government. It is pursuant to this order that the Principal Secretary passed the order on 10.06.2010 (Annexure-11 to the Letters Patent Appeal).



10. It was, then, argued that the Marwari Middle School, Sitamarhi, is minority school. Let it be placed on record that there is no such pleading either in the writ petition or in the counter affidavit or even at the stage of this Letters Patent Appeal. All that is noticed and pleaded is that, it is a government aided private school managed by a Managing Committee that does not make it a minority institution, in spite of this issue having been raised in course of argument on earlier occasions.

11. Learned counsel for the writ petitioner/private respondent could not bring a chit of paper on record to establish its minority character. Even otherwise, if it is a minority institution, it has been held repeatedly that, in terms of Articles 29 & 30 of the Constitution, the Government cannot interfere in the management of the school. It has the power to speculate educational qualification of the teachers and the principal. The educational qualification the government has decided, to be post-graduate. Even if, it was a minority institution, that would apply, and subsequently disentitle the writ petitioner from being the Principal of

the said School.

12. Thus, for the reasons aforesaid, we have no option but to set aside the order of the learned Single Judge and dismiss the writ petition, and consequently allow this Letters Patent Appeal.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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