

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3463 of 2016

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Krishna Singh, Son of Mathura Singh, resident of Village & P.O Sihuli
Khaira, P.S.: Rafiganj, District: Aurangabad (Bihar).

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Human Resources Department, Government of Bihar, Patna.
3. Director, Secondary Education, Education Department, Government of Bihar, Patna.
4. The State Project Director, Bihar Secondary Education Council, Bihar, Patna.
5. The District Magistrate, Aurangabad.
6. Deputy Development Commissioner, Aurangabad.
7. The District Education Officer, Aurangabad.
8. The District Programme Officer (Establishment), Aurangabad.
9. The Circle Officer, Rafiganj, District: Aurangabad.
10. The Block Education Officer, Rafiganj, Aurangabad.

.... Respondents

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Appearance :

For the Petitioner : Mr. Birendra Kumar Singh, Advocate.
For the State : Mr. Anil Kumar Sinha, G.A. 1 and Ms.
Aditi Hansaria, A.C. to G.A. 1.
For the Respondent No. 4 : Mr. Girijesh Kumar, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
AND
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)
Date: 31-01-2017

Heard learned counsel for the petitioner and learned
counsel for the respondents.

This writ application has been filed, on behalf of the



petitioner, as a Public Interest Litigation against the order dated 09.07.2015, Annexure-9, cancelling the up-gradation of Urdu Middle School, Sihuli Dargah, and Middle School Khaira, into High School, passed by the State Project Director, Bihar Secondary Education Council, Patna, being discriminatory, as also, contrary to the order contained in Memo No.89 dated 13.01.2015, Annexure-6, with a further prayer for direction upon the respondents to start the construction of building of the above referred High Schools, which find reference in Annexure-8 to the writ petition.

The petitioner professes himself to be a social worker and has been raising the issues of the locality.

The brief facts, leading to the present writ petition are that there are two Middle Schools under the Gram Panchayat Sihuli, Block-Rafiganj, District-Aurangabad, one is Government Middle School, Sihuli Khaira, and another is Urdu Middle School, Sihuli Dargah. On 30.11.2013, the Block Education Officer, Rafiganj, wrote a letter to the District Programme Officer (Scheme & Accounts) in respect of up-gradation of Middle School, Sihuli Khaira, into an up-graded Secondary School, indicating therein that several persons have donated 1 acre and 41 decimals of land, and the building of the Middle School is already constructed over



an area of 12 decimals.

The District Education Officer, Aurangabad, vide Letter No.119 dated 26.09.2014, made request to the State Project Director, Bihar Secondary Education Council, Patna, to upgrade Middle School, Sihuli Khaira in place of Urdu Middle School, Sihuli Dargah, into a Secondary School, in view of comparative availability of resources of both the Schools. In the meanwhile, the petitioner herein namely, Krishna Singh, approached this court earlier, in CWJC No. 21628 of 2014, which came to be disposed of vide order dated 23.12.2014, with an observation that the petitioner would represent before the Project Director, Bihar Secondary Education Council, Patna, in light of Memo No. 119 dated 26.09.2014 of the District Education Officer, Aurangabad, with a further direction to dispose of the representation of the petitioner by the Project Director, Bihar Secondary Education Council, Patna, as early as possible, in any case within two months. By the said order dated 23.12.2014, the Co-ordinate Bench of this Court further observed that any construction and/or extension of the Urdu Middle School into a High School will be subject to the decision of the Project Director.

The Director, Secondary Education, Bihar, Patna, vide Letter No. 1381 dated 08.07.2015 informed the District



Magistrate, Aurangabad, that the District Level Committee in it's meeting dated 04.07.2015, had passed a resolution that upgraded Urdu Middle School, Sihuli Dargah and Middle School, Sihuli Khaira, do not qualify the requirements as prescribed by the Department, therefore, no recommendation being made by the District Level Committee in respect of both the schools and in view of the said resolution of non-recommendation by the District Level Committee, the Director, Secondary Education, Bihar, Patna, cancelled the recommendation of Upgraded Urdu Middle School, Sihuli Dargah, under Block- Rafiganj, within the district of Aurangabad. The said letter of the Director, Secondary Education, Bihar, Patna, was written in context of CWJC No. 21628 of 2014 and M.J.C. No. 1159 of 2014 (Krishna Singh-Vs-State of Bihar & Ors.). Thereupon, the State Project Director, Bihar Secondary Education Council, Patna, vide Memo No. 644 dated 09.07.2015, passed the order under challenge indicating therein that the District Magistrate, Aurangabad, vide Letter No. 320 dated 06.07.2015, had made information that the District Level Committee constituted for the said purpose, passed a resolution in it's meeting dated 04.07.2015 that Urdu Middle School, Sihuli Dargah and Middle School, Sihuli Khaira, do not qualify the criteria prescribed in departmental Resolution No.1021



dated 05.07.2013, therefore, they have not been recommended for up-gradation in High School. The said order further reflects that the Director, Secondary Education, Patna, vide Letter No. 1381 dated 08.07.2015 had cancelled the up-gradation of Urdu Middle School, Sihuli Dargah.

Another Co-ordinate Bench of this Court taking notice of the order dated 09.07.2015, as referred above, passed by the State Project Director, Bihar Secondary Education Council, Patna, consigned the contempt matter bearing MJC No. 1159 of 2015, which was filed, claiming disobedience of the order dated 23.12.2014 filed in CWJC No. 21628 of 2014.

A counter affidavit has been filed by the respondent no.8, contending therein that the District Level Committee in its meeting dated 04.07.2015 considered the matter of up-gradation of Urdu Middle School, Sihuli Dargah and Middle School, Sihuli Khaira, into High School, as both the Schools do not have the required area of land i.e. 1-1.50 acres, thus, the District Level Committee made no recommendation as to up-gradation of both the Middle Schools as mentioned above, into High School and on the basis of the resolution of the District Level Committee, the District Magistrate vide his Letter No.320 dated 06.07.2015, communicated the State Project Director, whereupon, accordingly



the order contained in Memo No. 664 dated 09.07.2016, came to be passed, which is subject matter of the present writ petition.

A supplementary counter affidavit has also been filed, on behalf of respondent nos. 5, 7 and 8. The contention of the respondents in the supplementary counter affidavit was to the specific effect that in pursuance to several directions, the Additional Collector, Aurangabad, again made spot inspection of both the schools and after conducting spot enquiry, submitted report vide Letter No.320 dated 14.12.2016 with details of the concerned Schools, thereupon, the District Level Committee convened its meeting on 14.12.2016 itself, under the Chairmanship of the District Magistrate, Aurangabad. It was also contended that as per the departmental guidelines, the minimum requirement of land was not available within the premises/campus of the School, therefore, considering that aspect of the matter, the District Level Committee did not make recommendation for up-gradation of both the Schools.

After considering the rival contention of the parties as well as examining the documents brought on records, we find that the District Level Committee headed by the District Magistrate, Aurangabad, in its meeting dated 14.12.2016, took a conscious



decision after making analysis that the proposed land for donation having an area of 69 decimals, does not fall within the School premises of Urdu Middle School, Sihuli Dargah, and similarly in the Middle School, Sihuli Khaira, the proposed land for donation, having an area of 1.5 acre does not fall within the School premises. Therefore, the District Level Committee took a decision, not to make recommendation regarding the up-gradation of Urdu Middle School, Sihuli Dargah and Middle School, Sihuli Khaira.

The Department of Education, Government of Bihar, Patna, vide Resolution No.1021 dated 05.07.2013, has framed a policy and also fixed the criteria for establishment of Higher Secondary School, which also includes up-gradation of Middle School, into High School. In Clause 5 (iii) of the said resolution, it is stipulated that for the purpose of up-gradation of Middle School, into High School, minimum 1-1.5 acre of land being owned by the School and 40 decimals of vacant land is also required in the School as to develop the infrastructure. In that view of the matter, the State Government has framed its policy and fixed criteria regarding the up-gradation of Middle School, into High School and the schools in question does not qualify the criteria, therefore, the decision of the respondent authorities vide dated 09.07.2015, does not suffer from any vice.



We are of the opinion that up-gradation of Middle School, into High School is a policy matter of the State and it is in the exclusive domain of the State to fix the suitable criteria by formulating guidelines. Unless such decision regarding cancellation of recommendation of the Schools in question, by the respondent authorities, may suffer from vice of arbitrariness or infringement of constitutional/legal right, this Court has no occasion to interfere in the decision taken by the State or its authorities.

We are of the view that question of policy is essentially for the State to decide, because a Court can't be propelled into the unchartered ocean of Government Policy.

Thus, the present Public Interest Litigation being the void of merit, is, accordingly, dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

U.K./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.02.2017
Transmission Date	

