

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1360 of 2013

In
Civil Writ Jurisdiction Case No.8987 of 2005

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1. The State of Bihar through Commissioner and Secretary, Primary and Adult Education Department, Vikash Bhawan, Patna
 2. Commissioner and Secretary, Primary and Adult Education Department Vikash Bhawan, Patna
 3. Director, Primary Education, Bihar Vikash Bhawan, Patna
 4. District Education Committee through the Deputy Development Commissioner-Cum-Chairman, Vaishali, District- Vaishali
 5. Deputy Development Commissioner-Cum-Chairman, District Education Committee Vaishali
 6. District Superintendent of Education, Vaishali At Hajipur

... .. Appellant/s

Versus

1. Smt. Priyambada W/O Shri Vijay Kumar Singh Resident Of Village And P.O.- Khabra, P.S.- Sadar Muzaffarpur, District- Muzaffarpur
2. Shri Nand Kishore Mishra Son Of Late Julum Mishra Resident Of Village- Variahi Soti, P.O.- Haridaspur, P.S.- Kanti, District- Muzaffarpur
3. Shri Shashi Bhushan Mishra Son Of Chandeshwar Mishra Resident Of Village- Soti, Variahi, P.O.- Kanti, P.S.- Kanti, District- Muzaffarpur
4. Sri Braj Kishore Thakur Son Of Bansidhar Thakur Resident Of Village- Narayanpur, P.O. Haridaspur P.S. Kanti, District- Muzaffarpur
5. Smt. Kumari Meera W/O Shashi Bhushan Thakur Resident Of Village- Piar, P.O. And P.S.- Piar, District- Muzaffarpur
6. Sri Ranbir Kumar Son Of Braj Kishore Prasad Singh Resident Of Village- Raghunathpur, P.O.- Silaut, P.S.- Masahari, District- Muzaffarpur
7. Shri Jagdish Narain Singh Son Of Ramanand Narayan Singh Resident Of Village- Varihai Soti, P.O. Haridaspur, P.S.- Kanti, District- Muzaffarpur
8. Shri Ashwini Kumar Son Of Sri Sheo Shankar Prasad Singh Resident Of Village Raghunathpur, P.O.- Silaut, P.S.- Masahari, District- Muzaffarpur
9. Sunita Devi W/O Late Mohan Jha Resident Of Village- Dharampur, P.O.- Jaranag Rampur, P.S.- Vaishali, District- Vaishali



... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mrigendra Kumar, AC to GA-4
For the Respondent/s : Ms. Vagisha Pargya Vacaknavi, Advocate
Mr. Binod Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 28-11-2017

Aggrieved by the judgment and order dated 28.01.2013 passed by the Writ Court in CWJC No. 8987 of 2005, the State of Bihar has filed the instant Letters Patent Appeal under Clause 10 of the Letters Patent of the Patna High Court Rules.

2. The Writ Court after hearing the parties allowed the writ petition and directed compliance of the decision of the District Education Committee dated 31.1.1987 and take over the control of the Middle School, Dharampur, Vaishali along with its teaching and non-teaching employees as per the provisions of Section 4 of the Bihar Non-Government Elementary School (Taking Over of Control) Act, 1976 (hereinafter referred to as 'the Act') notwithstanding the fact that the writ petition was filed after 18 long years of the decision of the District Education Committee dated 31.1.1987 for its enforcement and during the intervening period the policy decision of the State Government came vide



cabinet decision dated 30.6.1993 not to take over any fresh school and the successive press communique issued by the State Government in the years 1999, 2001 and 2003 that there is no case of taking over the school is under consideration.

3. Learned counsel appearing on behalf of the appellants submitted that the Writ Court has entertained the hopelessly barred by delay and laches writ petition and directed for acting upon the recommendation dated 31.1.1987 and issued mandamus for taking over of the control of the school in question against the policy decision of the State Government contained in the notification dated 23.8.1993 not to take over any school.

4. The factual matrix involved in the present appeal lies in a narrow compass. The writ petitioners have filed the connected writ petition, CWJC No. 8987 of 2005 for a direction to take over the Middle School, Dharampur, Vaishali along with teaching and non-teaching employees under Section 3(4) of the Act on the ground that the District Education Committee constituted in terms of Section 3(4) of the Act has recommended the Director, Primary Education for taking over of the school in question. The writ petitioners-respondents herein have claimed that after the recommendation of the District Education Committee under Section 3(4) of the Act, they represented the State Government on



various dates in between 3.4.1994 and 11.3.1997 and when no action was taken, they had approached the writ court.

5. On behalf of the State a counter affidavit was filed by the DSE, Vaishali wherein stand was taken that policy matter of the State is involved in this case and referring to the different schemes under Section 3 of the Act, stand was taken that the claim of the writ petitioners is unsustainable in the eye of law. In para-15 of the counter affidavit, the DSE has disputed the fact that the school was recognized in 1972 as Annexure-1 to the writ petition was provisional and conditional. In para-16 specific stand was taken with reference to the Cabinet decision dated 30.6.1993 whereby the Government has taken a policy decision not to take over any school and follow up press communique was issued in the years 1999, 2001 and 2003 and as such the stand was taken that after the cabinet decision contained in the notification dated 23.8.1993, the writ petition is unsustainable and as the State Government is not willing to take over any school due to financial crisis. The Writ Court allowed the writ petition and issued direction to the State to act upon the recommendation of the year 1987, after 26 long years vide order dated 28.1.2013.

6. Counsel for the appellants in the aforesaid backdrop of the facts and circumstances submitted that the Writ Court has



committed error in entertaining the writ petition filed after 18 long years. He further submitted that the Writ Court, ignoring the cabinet decision vide notification dated 23.8.1993, whereby a policy decision was taken not to take over any school, has issued mandamus which is unsustainable as the State cannot be compelled to act contrary to the policy decision and take over the school. Referring to the judgment of the Full Bench in the case of **Shri Sidheshwar Prasad & Ors. Vs. The State of Bihar & Ors.: 1999 (3) PLJR 490**, he submitted that the recommendation of the District Education Committee is not binding on the State as it is only recommendation and it cannot, in any manner, override the policy decision of the State Government not to take over the school. He submitted that the scheme under Section 3 of the Takeover Act talks about different eventualities and situation and take over under Section 3(4) is not as a matter of course but depends on many factors and as such the Writ Court has committed error in directing the respondents to act upon the recommendation dated 31.1.1987. He referred to the judgment of this Court in the cases of **Ramnath Ram & Ors. Vs. The State of Bihar & Ors: 1995 (1) PLJR 359** and **Sri Rajendra Prasad Sinha Vs. The State of Bihar & Ors: 1991 (1) PLJR 412** and submitted that the Writ Court has committed error in directing



takeover of the school under Section 3(4) of the Act as the same is executive in nature and the High Court cannot usurp that power and direct take over of the school.

7. Ms. Vagisha Pargya Vacaknavi, appearing on behalf of the writ petitioners-respondents herein has submitted that the writ petitioners have made several representation before the authorities from 1987 to 1997 and when no action was taken by the respondents-appellants, the writ petition was filed and the writ court noticing the fact that there was recommendation of the Committee constituted under Section 3(4) of the Act, directed for takeover of the school in question and as such there is no infirmity in the decision of the Writ Court.

8. We have gone through the pleadings and considered the rival contentions of the parties. The writ petition was filed in the year 2005 for enforcement of the recommendation dated 31.1.1987 after 18 long years. In the meanwhile, there were many developments including the policy decision of the State Government not to take over any school as indicated in the notification as contained in Annexure-A dated 23.8.1993 and the subsequent press communique issued in the years 1999, 2001 and 2003 making it clear that no matter was pending for taking over of any school. In addition thereto, the whole schemes of elementary



education has undergone changes. Initially, the State Government has taken policy decision to engage Shiksha Mitra for spreading elementary education and later on in the year 2006 Panchayat Raj Institutions were conferred powers to make appointment in nationalized schools and with the advent of new legislative scheme, Panchayat Shikshak and others were inducted in the system of Elementary Education in 2006. The State Government consistently maintained its stand not to take over of any school in purported exercise of power under Section 3(4) of the 1976 Act.

9. We have also considered various judgments on which the appellants-State has relied upon, which is indicative of the fact that recommendation of the District Education Committee under Section 3(4) of the Act is only recommendation and is not binding. We have also noted the fact that the writ court issued direction to act upon the recommendation dated 31.1.1987 after 26 long years vide impugned judgment and order dated 28.1.2013. We also find substance in the submission of the appellants that the Writ Court has committed error in directing take over of the school in question in teeth of the policy decision of the State Government. From the tenor of the judgment under appeal, we find that the Writ Court has erred firstly, in directing the respondents to act contrary to the policy decision dated 23.8.1993 and moreover the Writ



Court has exceeded its jurisdiction in directing take over of the school usurping the executive power of the State Government.

10. In view of the judgments on which the appellants have relied upon, we find that the Writ Court was not justified in allowing the writ petition and directing taking over of the school in question. We find merit in the contention of the appellants.

11. Accordingly, the appeal is allowed. The judgment and order of the Writ Court dated 28.01.2013 is set aside and the writ petition is dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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