

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.59 of 2014
IN
Civil Writ Jurisdiction Case No. 5544 of 2006**

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1. The State Of Bihar through the Secretary, Human Resources Development Department, Government of Bihar, Patna
2. The Additional Finance Commissioner (Expenditure), Finance Department, Government of Bihar, Patna

.... Appellants

Versus

1. Primary-Cum-Middle Sanskrit School, Kishanpur Yusuf, P.O. Kishanpur Yusuf, P.S. Sarairanjan, District- Samastipur Through Its Headmaster Ramashray Prasad, S/O Late Sukhdeo Prasad Resident Of Village & P.O. Khalispur, P.S. Sarairanjan, District- Samastipur
2. Sanskrit Education Board through its Chairman, East Boring Canal Road, Patna

.... Respondents

With

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**Letters Patent Appeal No. 224 of 2014
IN
C.R. 488 of 2012**

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1. The State Of Bihar through the Secretary, Human Resources Development Department, Government of Bihar, Patna
2. The Additional Finance Commissioner (Expenditure), Finance Department, Government of Bihar, Patna

.... Appellants

Versus

1. Primary Cum-Middle Sanskrit School, Kishanpur Yusuf, P.O. Kishanpur Yusuf, P.S. Sarairanjan, District- Samastipur Through Its Headmaster Ramashray Prasad S/O Late Sukhdeo Prasad, Resident of Village & P.O. Khalispur, P.S. Sarairanjan, District- Samastipur
2. Sanskrit Education Board through its Chairman, East Boring Canal Road, Patna

.... Respondent/s

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Appearance :

For the Appellants : Mr. R.B.P.Yadav, AAG-11
For the Private Respondents: Mr. Amit Shrivastava, Advocate
Mr. Girish Pandey, Advocate
For the Respondent Board : Mr. S.S.Sundaram, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 04-04-2017



L.P.A. No. 224 of 2014 :

Heard counsel for the parties.

A detailed hearing and consideration was given in L.P.A. No. 59 of 2014. Keeping the same in mind, if the learned single Judge after due consideration of the submissions decided not to review his order as the review application was filed basically to avoid contempt proceeding, the dismissal of the review application was in order and the appeal again is an effort to save the skin of the State rather than any tangible reason where reconsideration is required in appeal. L.P.A. No. 224 of 2014 is dismissed.

L.P.A. No. 59 of 2014 :

Heard learned counsel for the State rather extensively. Instead of making pointed submission on any factual or legal aspect of the infirmity in the decision of the learned single Judge, he has only been rambling and nothing tangible in terms of pinpointed assistance is emerging as to why the decision of the learned single Judge dated 17.05.2011 should be interfered with, in appeal.

The writ application was filed by the private respondent, which is a Sanskrit school, claiming that the State authorities have been adopting pick and choose method and despite adequate material available before them regarding grant of recognition and was granted way back in the year 1992, they are still playing games and not



willing to implement their own decision dated 09.09.1992, which was letter No. 947 issued under the signature of Additional Secretary, Human Resources Development Department, Government of Bihar. Not only this, the matter had travelled right up till the Apex Court in a previous round of litigation and the Hon'ble Supreme Court gave a categorical direction with regard to recognition as well as financial aid while disposing off the S.L.P., a copy of which is also available on record of the writ application, as Annexure-7.

The learned single Judge has waded through the entire history of the litigation and has categorically held on the materials available that there was a specific recommendation in favour of the school for recognition and as a consequence thereof even the financial benefit as was extended to 205 schools initially was required to be done even for this school.

When it came down to assistance in the writ application, the State chose not to file any affidavit in opposition and the reason thereof is not required to be gone into. Now effort is being made on behalf of the State counsel by selectively brining new materials and evidence on record, which are truncated in nature. There is also suppression of official documents and records, which are favorable in nature to the school, in rendering assistance in appeal, which is a totally unfair conduct on the part of the State. The Court deprecates



such a conduct.

The learned single Judge after considering not only the facts but various judgments of the Apex Court concludes in following words :

“Thus, from the above, it is clear that discretion does not mean sweet will of the State. It has to be exercised appropriate to the facts. Here in the facts of the case it would be seen that the petitioner was held to be entitled for recognition as far back in 1984 and in 1922 while 205 other schools similarly situated were granted recognition and aid. The petitioner was left out. Why it was left out, was never disclosed in any proceeding before this Court or Division Bench or the Apex Court. It is true that aid cannot be demanded, as a matter of right, but when the aid is being given or being distributed, there cannot be any discrimination in that regard. The action has to be non discriminatory even though the action is discretionary. The only ground now in 2006 (Annexure 1) given is that the State is under heavy debt running into thousand of crores, surely the aid to be given to the petitioner in a year would not have exceeded even rupees couple of lakhs. It is not the case of the State that no aid has been given to any educational institution thereafter.

To the contrary it is common knowledge that aid to educational institution is increasing every day and newer and newer institutions are being given aid. The bald statement of the State of thousand of crores of



debt would not absolve it of its obligation.

Now we come to the second aspect of the matter i.e. the stand taken by the State that even if it be held that aid was to be given, now the time had expired by intervention of 1993 Rules and as such aid could not be given. Firstly, as noted earlier, this plea of 1993 Rules is not available to the State. Moreover, the petitioner had been demanding equal treatment and consequently aid since long before when there was no reason not to grant. Now State says that because they slept over the matter, nothing can be done and the petitioner's right to receive aid is lost. In this connection I would refer to what Chief Justice, Chagla said in the case of *All India Groundnut Syndicate Limited -Versus- Commissioner of Income Tax, Bombay City*, AIR 1954 Bombay 232 :

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income-tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is



deprived of that right because “I have committed a default and the right is lost because of that default.”

Then I may refer to the case of **Manglore Chemicals & Fertilizers Ltd. –v- Deputy Commissioner of Commercial Taxes and others since reported in AIR 1992 SC 152.** In this case certain sales tax incentives were granted for rapid industrialization. One of the incentives was the grant of permission for adjustment of tax within the period specified in the notification. The petitioner applied. The matter was delayed at the level of the State. When ultimately the matter was taken up, the State took a stand that the period within which adjustment has to be made, had expired and as such incentive could not be granted. The Apex Court held as under in para 11 of the report. The relevant part thereof is quoted hereunder:

“What we have here is a pure technicality. Cl. (3) of the notification leaves no discretion to the Deputy Commissioner to refuse the permission if the conditions are satisfied. The words are that he 'will grant". There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld - not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant had nothing to do with those issues. Appellant is now told "we are sorry. We should have given you the



permission. But now that the period is over, nothing can be done". The answer to this is in the words of Lord Denning: "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality" (see *Wells v. Minister of Housing and Local Government*, (1967) 1 WLR 1000 at p. 1007).

Francis Bennion in his 'Statutory Interpretation', 1984 edition, says at page 683:

"Unnecessary technicality: Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the legislation."

I have referred these two decisions to show that no one can take advantage of his own default and that too the detriment of another. The government slept over the petitioner's matter and now the government cannot say that the time is over and aid cannot be given. The right cannot be defeated because that was a default on the part of the government itself.

I may also note a very recent development. On 31.3.2011, the State of Bihar published in the Bihar Gazette extra ordinary the Bihar State Litigation Policy, 2011. I may refer to clause 1.1(b) and 1.7 thereof:

“ 1.1(b) Responsible litigant means:



- a. That litigation will not be resorted to for the sake of litigation.
- b. That false pleas and **hyper-technical points will not be taken and shall be discouraged.**
- c. Ensuring that the correct facts and all relevant documents are placed before the court.
- d. That nothing shall be suppressed from the court and there will be no attempt to mislead any court or Tribunal.

1.7 The Policy shall have the force of an administrative regulation. "

What we have here is hyper-technical points to defeat the legitimate claim of the petitioner by the State. As noted by the Apex Court in the case of **Manglore Chemicals & Fertilizers Ltd.** (supra) and in the State Litigation Policy, such hyper-technical plea to defeat legitimate claim should not be permitted.

In the result, it is a fit case in which the State be directed to grant financial aid to the petitioner's school as the discretion exercised by it are based on no cogent or relevant reason and are too generalization to be accepted. The impugned decision of the State, as contained in Annexure 1, refusing to grant aid is, thus, set aside and direction issued accordingly. The State would be required to pass appropriate order within a period of two months accordingly."

This Bench does not have to add anything more than what the learned single Judge has had to say with regard to the rights



of the private respondent in relation to the recognition and financial assistance. The Court is also informed that when an effort was again made by the State authorities not to comply with the direction of the Court, a contempt proceeding was initiated and on failure to satisfy the Court with regard to steps not taken or so taken, they finally issued a notification granting recognition and financial aid to the institution in question.

Since the order of the learned single Judge does not suffer from any infirmity and moreso when no such infirmity was pointed out by the counsel representing the State or was found by this Court while going through the order and the records, the appeal is fit to be dismissed. It is a fit case where cost should have been imposed upon the State, which the Court was quite inclined to do so.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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