

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1754 of 2015
IN
Civil Writ Jurisdiction Case No. 18887 of 2008**

- =====
1. The State Of Bihar through Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
 2. The Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
 3. The Director, Secondary Education, Human Resource Development Department, Govt. of Bihar, Patna.
 4. The District Education Officer, Samastipur, Bihar.

.... Appellant/s

Versus

Ranjana Kumari W/o Pramod Kumar Mishra, At present In-charge, head Mistress, Ram Karan Thakur, Girls High School, Imansarai, P.S. Patori, District Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anjani Kumar, AAG 4
Mr. Deepak Sahay Jamuar
For the Respondent/s : Mr. P K Shahi, Sr. Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-10-2017

Seeking exception to an order dated 20th December, 2015 passed by the learned Writ Court in CWJC No.18887 of 2008 this appeal has been filed under Clause 10 of the Letters Patent by the appellant-State of Bihar.

Facts in brief goes to show that that respondent Smt. Ranjana Kumari, Headmistress of Ram Karan Thakur Girls High School, Imamsarai, PS Patori, District Samastipur, filed the writ petition in question seeking a direction to the State Government to



treat the school as a Project School and grant of benefits to the school.

In the year 1983-84 the State Government took the policy decision to encourage girl children to go to school. Accordingly, a detailed Scheme was drawn up for establishing of girls school wherever required in various Blocks throughout the State. Initially, 300 Blocks were identified and out of these in 75 Blocks the Government took a decision straightway and with regard to the remaining certain directions were issued to the District Administration to form a Three Member Committee to identify the schools in the Blocks and make recommendation.

Be that as it may, it is the case of the petitioner that the District Level Committee selected the school of the petitioner for being treated as a Project School, recommended it to the State Government and in the meanwhile granted finance, constructed the school building and treating the school to be a Project School extended to it all the benefits. But when the State Government did not recognize the school inspite thereof the writ petition was filed which having been allowed this appeal by the State Government.

Learned counsel appearing for the State Government at length took us through the policy and the judgment rendered by the Supreme Court in the case of **State of Bihar vs. Project, Uchha Vidya Sikhsak Sangh [(2006) 2 SCC 545]** and argues that merely



because the District Education Officer has recommended for taking over of the school, the school in question cannot be declared as a Project School. It is stated that in the district of Samastipur only five schools were identified and one of the Block identified was Hasanpur and the present school situates in Patori Block did not fall in the Block identified in the district of Samastipur. Accordingly, it is the case of the State Government that merely because the District Education Officer has recommended, petitioner's school cannot be declared as Project School when Block Patori was not with the purview of the scheme prepared by the State Government for establishing of any school. In sum and substance, the only objection of the State Government raised in the Writ Court is that the State Government had not identified Patori Block as an area where any school under the scheme should be established, therefore, the District Education Officer had no authority to recommend the school in the Block instead of the school in Block Hasanpur.

On the contrary, the learned counsel for the respondent took us through the overwhelming documents available on record, particularly Annexure-D dated 23rd February, 1985 issued by the State Government whereunder the power for identifying the school and the block was delegated to Three Member Committee consisting of the District Magistrate as the President/Chairman, District Development



Officer as a Member and the District Education Officer as Convener. It is the case of the respondent that it is on the basis of the aforesaid power delegated to the District Level Committee, that the Committee had recommended the school in question situated in Patori Block and gave reasons as to why Block Hasanpur should not be considered, as it already had the facility of a girls school. It is further seen from the record that the District Collector sanctioned funds, school building was constructed, regular students were admitted and the school was granted recognition and evaluated by the Bihar School Education Board and even facility of all grants according various schemes of the State Government was accorded to the school in question. Accordingly, he argues that once the State Government delegated its power to the District Administration and the District Administration had taken action based on the power of delegation the learned Writ Court has rightly granted the benefit and interference into the same is not called for.

That apart, learned counsel also argued that it is not correct to say that schools were only established in the Blocks notified by the State Government, on the contrary, in the district in question i.e. Samastipur certain schools were established as is evident from the documents Annexure -11 series which shows that against sanction of four block schools in Samastipur in five Blocks schools were



developed which includes certain Blocks not covered in the original list.

Having heard learned counsel for the parties at length we find that the learned Writ Court after evaluation of the various aspects of the matter in detail decided the issue in the following manner:-

“Having considered the matter, in my view, the writ petition must succeed. From various documents annexed to the writ petition, the policy and the modus operandi of the Government is clear. It had taken a decision to establish Schools under the Project for educating girl child. These are commonly known as Project Schools. It identified 300 Blocks in which Schools had to be identified and/or set up. In Samastipur, Patori was not one of those Blocks out of these 300. In 5 Blocks, Government identified the School even. Again, petitioner’s School at Patori Block of Samastipur district was not there but simultaneously, Government gave liberty to the District Administration to form a Three Men Committee and select School at other places where there was need for such establishment. It is not in dispute that the Three Men Committee in the district of Samastipur was affirmed. The Three Men Committee duly considered the situation and recommended that instead of Hasanpur, Patori Block should be selected because Hasanpur already had School functioning with School building and other facilities. That would widen the establishment of Schools. Accordingly, upon recommendation by the District Education Officer, funds



were made available for construction of School building and other infrastructure facilities for petitioner's School. These facts are not in dispute nor denied. What the State wants the Court to accept is that notwithstanding this, State finally did not accept petitioner's School as a Project School. Patori was not a Block accepted by the State and, as such, petitioner cannot claim any privilege as a Project School. In my view, that is putting the cart before the horse. That is begging the question. That is the dispute being raised by the petitioner and the relief being claimed. That the State action or the stand of the State is contrary to the action taken by the State or on behalf of the State. In my view, petitioner is correct as evident from Annexure D to the supplementary counter affidavit of the State. It cannot be denied and it is not denied that State had given discretion to the district authorities to make selection based on ground reality obtaining in the district. If we read Annexure D and then we refer to Annexure 7 of the writ petition, the decision is clear. Upon discretion conferred by the State on the district authorities, the district authorities selected petitioner's School at Patori instead of the School at Hasanpur because that School already had building and other infrastructure. Thus, the district authorities selected petitioner's School apart from other Schools in the district as a Project School. Accordingly, building and other infrastructures were established. Teachers were placed and teaching started as a regular School with due recognition and affiliation of Bihar School



Examination Board. Now, to say that the petitioner's School does not figure in the notification of 2009, is of no consequence. That is what is under challenge. Those actions of the State are under challenge that having set up the School would they abandon the School on technicalities? The answer has to be no. Once discretion was vested in the district authorities to select a School and that discretion has been exercised by the district authorities in accordance with its charter then State cannot back track and ignore conferment of discretion and its exercise thereof. That cannot be permitted. State cannot say that it is not bound by the selection as made by the district authorities once it is admitted that State conferred the discretion on the district authorities. The stand of the State is not that the district authorities acted beyond their jurisdiction because Annexure D clearly leaves it to the district authorities to select Schools in other areas as well. With good justification, Patori was selected and so was selected petitioner's School. It is too late in the day now to say that petitioner's School was not duly selected as a Project School especially when there is not even an admitted denial that it was not set up with State fund for this purpose under this very scheme."

It is, therefore, seen from the analysis of reason given by the learned Writ Court that in view of Annexure-D dated 23.02.195 the learned Writ Court found that once the District Administration recommended the school in question situated in Block Patori and



when the District Administration started treating the school as a Project School granted aid and funds to the school, got the school building constructed, developed infrastructure facility and when the State Government also treated it so, the learned Writ Court was of the opinion that merely because in the list or figure granted by the State Government Block Patori was not including in Samastipur District the act of the State Administration cannot be approved. In our view the learned Writ Court has not committed any error in doing so in the facts and circumstances of the present case. If the policy of the State Government is analyzed and if the judgment in the case of **Project Uchha Vidya Sikshak Sangh** (supra) is taken note of it only approves establishment of the school in accordance with the policy at Block level and it only shows that the District Education Officer is not empowered to issue any notification for taking over all the management or contract of the school. The said observation of the Supreme Court shall not apply in this case. Annexure-D is a communication of the Education Department of the Government of Bihar on 23.02.1985 addressed to the District Administration throughout the State. It speaks about the policy of the State Government dated 25.01.1985, selection of 300 Blocks and decision taken with regard to 75 Blocks only schools are to be established. However, the said letter further indicates that after identification of 75



Blocks for identifying the remaining Block where remaining schools are to be established a District Revisional Committee be constituted for selection of area and where the schools should be established and for the said purpose a Three Member Committee under the Chairmanship of the District Magistrate was constituted and the power given to the said Committee was to select area and the Block where the school was to be established and various other incidental work connected thereto. It is because of this decision and act of the State Government that the learned Writ Court has held that the State Government having delegated its authority to the District Administration by constituting a Three Member committee and entrusted the job of identifying and establishing the school. In the present case, the Three Member Committee recommended Patori Block in Samastipur District instead of Hasanpur because in Hasanpur a school was already functioning within an established building and with all other facilities. Based on the recommendation of the Committee, the District Administration made available those other facilities of the school building, infrastructure facilities were granted and petitioner's school started functioning in the Block Patori.

Taking note of all these factors indicated hereinabove, the learned Writ Court has allowed the writ petition. In our considered view, the Writ Court for the reasons as are indicated hereinabove, has



not committed any error in allowing the writ petition. The arguments advanced by learned counsel representing the State Government was that the District Education Officer has no authority or power to make any recommendation and in support thereof he relies highly on the judgment of the Supreme Court in the case of **Project Uchha Vidya Sikshak Sangh** (supra), wherein it is held that the District Education Officer is not authorized nor is empowered under law to take over any institute. In our considered view this submission of the counsel for the State is wholly misconceived. It is not a case where the District Education Officer has taken action for recommending and taking over the school, on the contrary, based on a conscious decision taken by the State Government and the power delegated to the District Authorities vide Annexure-D dt. 23.02.1985 the action in question was taken and the State Government if it did not approve this action instead of restraining the District Administration when the school was established and started functioning, the State Government even extended the benefit aid and fund and also the benefit of certain schemes to the said school like buying uniform and bicycle to the children etc., it was on account of all these factors that the Writ Court issued the direction for treating the school as a Project School.

In the peculiar facts and circumstances of the case, we find no reason to interfere into a reasonable order passed by the



learned Writ Court, merely because the Block Patori was not included in the region recommended or identified by the State Government. Once for justifiable reason, exercising its discretion granted by Annexure-D when the entire action was taken by the District Administration on the basis of the power delegated to them, we find no error in the order of the learned Writ Court warranting reconsideration.

The appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl

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