IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15498 of 2017

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Savitari Devi Uchh Madhayamik Vidyalaya Chauhar Badariganj, Arwal through its President Bindeshwar Prasad Son of late Neman Prasad Village-Chauhar, P.O. Anandpur, P.S. Karpi, District- Arwal.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The District Education Officer, Arwal.
5. The Bihar School Examination Board (Senior Secondary), Buddha Marg, Patna through its Secretary.
6. The Chairman, Bihar School Examination Board (Senior Secondary), Buddha Marg, Patna.
7. The Secretary, Bihar School Examination Board (Senior Secondary), Buddha Marg, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Sunil Kumar Singh
For the Respondent/s : Mr. Ashutosh Ranjan Pandey -Aag15

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 13-08-2018 This writ application has been filed seeking quashing of the letter no. 3494 dated 21.10.2016 issued by the Secretary, Bihar School Examination Board, whereby the affiliation granted in favour of Savitari Devi Uchh Madhyamik Vidyalaya Chauhar, Badariganj, Arwal, has been cancelled.

This is not in dispute that before a decision to cancel the affiliation was taken, the matter was not placed before the Affiliation Committee of the Board as required under Section 10C of the Bihar School Examination Board Act, 2007.

I have heard Mr. Sunil Kumar Singh, learned counsel

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for the petitioner and learned counsel representing Bihar School Examination Board.

This is not in dispute that the point involved in the present case is squarely covered by a Division Bench decision of this Court dated 13.07.2018 in case of ***Bihar School Examination Board & Ors. Vs. Asha Sinha Memorial Uchch Madhyamik Vidyalaya, Dariyapur Barua, Sonepur & Ors.*** (L.P.A. No. 1431 of 2017) and other analogous cases. This is also not in dispute that the decision to cancel the affiliation was not taken by the Board, rather the said decision was taken by the other authorities of the Board, not empowered to take such decision. Paragraphs 14 to 16 of the Division Bench decision of this Court in case of ***Bihar School Examination Board & Ors. Vs. Asha Sinha Memorial Uchch Madhyamik Vidyalaya, Dariyapur Barua, Sonepur & Ors.*** are reproduced hereinbelow, which, admittedly, govern the case of the petitioner: -

> **"14. Having heard learned senior advocate on behalf of the appellants, learned counsel for the private respondents and learned counsel for the State, this Court is of the considered opinion that the power of cancellation/withdrawal of affiliation to the schools in question is vested only with the Board ('Board as constituted under Section 4 of the Act'). The Board consists of various members and the Chairman of the BSEB is one of the members of the Board only, therefore after receipt of the show cause replies on behalf of the schools in question**

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their replies were required to be placed before the 'Board' which has not been done in the present case. This is an admitted position and even learned senior counsel for the BSEB has admitted that the matter was not placed before the Board with the show cause replies before the decision was taken by the Chairman for cancellation/withdrawal of the affiliations of the schools. It is well settled by the judicial pronouncements that if the Statute provides a particular thing to be done in a particular manner, the same must be done in the manner provided by the Statute or not at all. In this regard we refer a judgment of the Hon'ble Supreme Court in the case of Hukam Chand Shyam Lal Vs. Union of India & Ors. reported in AIR 1976 SC 789. Paragraph 18 of the said judgment is quoted hereunder for a ready reference: -

> ***"It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is a ll the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided, will be violative of the fundamental principles of natural justice. Now, in the present case, if the telephones of the appellants were to be disconnected on the ground of misuse, then they had to give, in consonance with the principles of natural justice, opportunity to the appellants to explain their conduct before taking action under Rule 427 read with Rules 416 and 421. Resort to the wrong and more drastic course provided in Rule 422, on a ground which was not germane to an action under that Rule, vitiates the impugned order, particularly when it is manifest that in making the impugned order, the General Manager was influenced more by this ground and less, if at all, by the existence***

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of 'public emergency' certified by the Delhi Administration."

15. The same view has been reiterated by the Hon'ble Supreme Court in the case of V.T. Khanzode & Ors. Vs. Reserve Bank of India & Anr. reported in AIR 1982 SC 917.

16. We, therefore, do not find any error in the view taken by the learned Writ Court that the impugned action of the Chairman, BSEB in the matter of cancellation/withdrawal of the affiliation of the schools in question cannot be sustained and those are liable to be set aside. Even though learned senior counsel representing the BSEB has attempted to place before us a number of grounds for taking such a decision by the Chairman of the BSEB, we are conscious of the present stage of litigation where this Court has remanded the matter back to the 'Board' constituted under Section 4 of the Act to take a fresh decision and, therefore, we are of the view that it would not be just and proper for this Court to examine or to delve upon the grounds for cancellation which have been sought to be raised before us. We leave it open to the 'Board' to consider the matter afresh after giving an opportunity to the schools in question in accordance with law, consider their replies independently and pass a reasoned order after due consideration to the replies of the schools. Such decision must be taken by the Board within a period of three months from the date of receipt/production of a copy of this order."

Accordingly, the impugned letter dated 21.10.2016 is hereby set aside. This application is allowed with the similar directions and observations as recorded by the Division Bench of this Court in case of ***Bihar School Examination Board &***

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Ors. Vs. Asha Sinha Memorial Uchch Madhyamik Vidyalaya, Dariyapur Barua, Sonepur & Ors.

There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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