

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14525 of 2017

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Rameshwar Singh son of Late Keshav Prasasd Singh, Resident of Chilharuan, P.S. Chilharuan, District Rohtas, at Sasaram at present posted as Principal of Dr. Rameshwar, Tileshwari Senior Secondary School Goura, P.O. Lilvanchh Dinara, District Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Bihar School Examination Board, Sinha Library Road, Patna.
3. The District Magistrate, Rohtas.
4. The Additional Collector Rohtas at Sasaram.
5. The District Education Officer, Rohtas at Sasaram.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harsh Anuj, Advocate
For the Respondent/s : Mr. Prabhakar Jha, G.P. 27

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 12-07-2019 Heard learned counsel for the petitioners and the learned counsel for the Bihar School Examination Board.

2. The issue raised in this case was also the issue in C.W.J.C. No. 5366 of 2019 and C.W.J.C. 5989 of 2019 and C.W.J.C. No. 5922 of 2019.

3. After decision in C.W.J.C. No. 5922 of 2019, Examination Board raised new issue in other writ petition. This Court decided the writ petition noticing the further issue raised by the Counsel of the Examination Board. It would be appropriate to refer to the decision of this Court after considering the further submission of the Examination Board.



“1. Mr. P.K.Shahi, learned senior counsel appearing on behalf of the petitioner would submit that this Court has occasion to decide the same issue in CWJC No. 5933 of 2019 and vide order dated 25.06.2019 the Court has allowed the writ application.

2. Mr. Satyabir Bharti, learned counsel appearing on behalf of the Bihar School Examination Board submits that certain legal aspect of the matter was not considered by this Court while deciding the C.W.J.C. No. 5922 of 2019.

3. Mr. Satyabir Bharti has raised submission that these institutions were not validly granted affiliation in terms of Sections 10© of the Bihar School Examination Board Act which confers power of the Board to grant affiliation.

4. Second contention of Mr. Bharti is that Section 15(4) is attracted only in case where institution has been granted valid affiliation which fulfills all the condition under Regulation 15(4).

5. Mr. Satyabir Bharti next contended that these institutions are bogus institutions and do not fulfill the condition for grant of valid affiliation and therefore, there is no obligation to follow the procedure prescribed under Regulation 15(4). The submission of Bharti is totally misconceived for the reason (a) that the authorities after application of mind and exercising power under the Act has granted affiliation. Now they are stopped from raising the issue that they were not granted affiliation validly. enquiry is only permissible if the affiliation was granted validly under 15(4). Submission and suggestion that affiliation was not granted validly is absurd and has to be rejected. (b) The submission that the institution does not fulfill the criteria for grant of affiliation this submission also suffers from same fallacy as procedural requirement



under regulation 15(4) is to provide procedural safeguard and it has been held out by the Larger bench of the Apex Court in Meneka Gandhi case that procedural requirement is sine qua non in the decision making process, starting from the judgment of the Apex Court in the case of E.P. Royappa reported in AIR 1974 SC 444 the Apex Court is consistently maintaining the stand that arbitrariness and equality are sworn enemy. The Court always condemn decision in breach of procedural safeguard and quashed such decision as arbitrary decision.

6. Considering the aforesaid, the Court does not find any merit in the submission of Mr. Bharti and the same is accordingly rejected.

7. Since this Court has already applied mind to the facts and circumstances of the case and the requirement and procedure referring to the judgment of Chancery Court in the case of Taylor Vs. Taylor, (1875) 1 Ch. D. 426, the Court has no option but to allow the writ application in the same terms of writ application i.e. C.W.J.C. No. 5922 of 2014 was disposed of.

8. Mr. Bharti as last limbs of argument has raised the issue of lack of fulfillment condition for affiliation by the petitioners institutions. The aforesaid submission is also absurd submission for the reason that all the terms and condition prescribed for taking decision as to grant of affiliation was presumed to be followed before granting affiliation simply because there is change in the guard, initial grant of affiliation cannot be disputed as bad without compliance of natural justice.

9. Now the new Chairman cannot claims to be wiser than the previous Chairman and the previous Board which granted affiliation. The affiliation granted earlier was based on appreciation of fact which cannot



be questioned without following the procedural requirement under regulation for cancellation.”

4. In view of the above, Annexure 9 of this petition cannot sustain. It is accordingly quashed. The writ petition is allowed. The effect of allowing the writ application must follow with immediate effect.

(Anil Kumar Upadhyay, J)

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