

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16711 of 2017

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Satya Sai Uchcha Madhyamik Vidyalaya S/o Vasudeo Pandey resident of
village - Samhota, P.S. - Kopa, District - Saran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director, Higher Secondary Education, Govt. of Bihar, Patna.
4. The Bihar School Examination Board, Patna through its Secretary, the Bihar School Examination Board
5. The Secretary, the Bihar School Examination Board, Patna.
6. The Chairman, the Bihar School Examination Board, Patna.
7. The Affiliation Committee of Bihar School Examination Board, Patna constituted under Rule 3 of the
8. The District Magistrate, Saran at Chapra.
9. The District Education Officer, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Apurva Kumar
For the Respondent/s : Smt.Binita Singh -Sc28

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 02-08-2019 Counter affidavit filed on behalf of the respondents is
taken on record.

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

2. Mrs. Apurva Kumar learned counsel appearing on
behalf of the petitioner would submit that this Court has
occasion to decide the same issue in C.W.J.C. No. 5933 of 2019
and vide order dated 25.6.2018 the Court has allowed the writ
application. The Court thereafter decided another batch of writ



applications on 28.6.2019 in CWJC No. 1965 of 2019 and analogous cases in the following terms:-

“Heard learned counsel for the petitioner and the learned counsel for the Bihar School Examination Board.

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”

3. 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.

4. 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.

5. 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).

6. 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.

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

8. 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.

9. 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 grating affiliation simply because there is change in the gard, initial grant of affiliation cannot be disputed as bad without compliance of natural justice.

10. 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.

11. Annexure-7 is quashed and writ petition is allowed and the effect of allowing the writ petition must follow with immediate effect.

(Anil Kumar Upadhyay, J)

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