

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2138 of 2015

In

Civil Writ Jurisdiction Case No.11864 of 2013

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1. Chhutaharu Das Prathmik- Sah Madhya Sanskrit Vidyalaya Patharaha (Bhawanipur), P.O. Bhawanipur, P.S. Phuskaha, District Araria, through its Headmaster Kumar Kant Mishra son of Late Makhan Mishra
 2. Kumar Kant Mishra Son of Late Makhan Mishra, Resident of village - Arraha, P.S. Pratapganj, District - Supaul at Present Posted as Headmaster in Chhutaharu Das Prathmik - Sah - Madhya Sanskrit Vidyalaya, Patharaha, P.O. Bhawanipur, P.S. Phuskaha, District – Araria.

... .. Appellants

Versus

1. The State of Bihar through the Principal Secretary, Education Departments, New Secretariat, Patna.
2. The Special Director, (Secretary Education) Education Department, Government of Bihar, Patna.
3. Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna through its Secretary.
4. Chairman, Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna.
5. Secretary, Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Durga Nand Jha, Adv.
For the Respondent-State:	:	Mr. Shashi Shekhar Tiwary, AC to AAG15
For BSSB	:	Mr. S.S.Sundaram, Adv.
	:	Mr. Shashank Shekhar Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 02-07-2019

Heard Mr. Durga Nand Jha, learned counsel appearing for the appellants, Mr. Shashi Shekhar Tiwary, learned AC to AAG-15 and Mr. Satyam Shivam Sundaram, learned counsel for the Bihar Sanskrit Shiksha Board.



It is feeling aggrieved by the judgment and order dated 17.09.2015 passed by a learned Single Judge in CWJC No. 11864 of 2013 whereby the writ petition was dismissed allowing the petitioner to establish the issue of recognition through the process of a suit that petitioner is before this Court.

In our opinion, the facts lie in a very narrow compass for it is undisputed that following the statutory provision underlying the Bihar Sanskrit Siksha Board Act, 1981 (hereinafter referred to as 'the Act') that 205 Sanskrit schools were granted recognition on the basis of recommendation made by the Sanskrit Shiksha Board under the enabling powers vested in them under Section 6(2) of 'the Act'. It is vide resolution dated 23.03.1985 of the State Government in its Education Department published in the Gazette Extraordinary on 13.04.1985 that 205 schools were granted recognition including the petitioner with effect from 01.01.1985. The name of the petitioner appears at serial no. 88 of the said Gazette publication. This is not in dispute. What is disputed is that on the basis of some enquiry made, which raised doubts on the functioning of the School in between the period 1990-1993, on an order was passed under the signature of the Additional Secretary vide order bearing Memo No. 185 dated 08.02.1994 that the recognition of the petitioner institution was cancelled. This order



has been placed on record vide Annexure-A to the supplementary counter affidavit filed on behalf the Education Department in the present appeal. Undisputed fact again is that the recognition under the law in force was granted to these institutions together with the financial aid. It is when this financial aid was stopped understandably in view of the order dated 08.02.1994 of the Additional Secretary, Education Department that the petitioner after making rounds of the Board office as well as the State Government came before this Court in CWJC no. 13643 of 2000 and when the District Magistrate was directed to hold fresh enquiry into the matter and make his recommendations.

It is again not in dispute that an enquiry followed and found the petitioner fulfilling all requirements for recognition. While this process was on that the State under the Rule making power vested under Section 22 of 'the Act' framed the Bihar Non-Government Sanskrit School (Recognition and Condition) Rules, 1993 which inter alia provided for the procedure for grant of recognition as well as cancellation thereof and also stipulated that any such recognition would be without 'financial aid'. Such is the stipulation present in Rule 5(5) of the Rules. It is acting on the basis of the report so submitted upholding the claim of the petitioner of fulfilling the statutory requirements for recognition



and bearing note of the statutory Rules which had come into force in the meanwhile that the Special Director vide order bearing no. 44 dated 15.01.2013 while granting recognition to the petitioner's school added a rider that such recognition would be 'without financial aid' in terms of the notification no. 793 dated 18.06.1994 whereby the 1993 rules had been notified. It is feeling aggrieved by this order which granted recognition 'without financial aid' that the petitioner returned to this Court through the writ petition in question which has been dismissed and hence this appeal.

The following issues have been canvassed by Mr. Jha to question the order dated 15.01.2013 of the Special Director in so far as it approves recognition of the petitioner's school without financial aid :-

(a) The grant of recognition to the School vide resolution dated 23.03.1985 at Annexure-10 to the supplementary affidavit filed in the writ proceedings is an order of the State Government issued under the authority of the Governor in terms of Article 166 of the Constitution of India and could only be interfered with in the like manner and not through an executive action of the Additional Secretary;

(b) There is nothing on record of the proceedings which would confirm any interference by the State Government in the



resolution dated 23.03.1985 in so far as recognition is granted to 205 schools together with financial aid;

(c) The order of the Additional Secretary bearing Memo No. 185 dated 08.02.1994 whereby recognition of the petitioner school was cancelled is an order without jurisdiction inasmuch as neither the Additional Secretary had the jurisdiction to interfere with the resolution of the State Government dated 23.03.1985 nor is it an order of the State Government;

(d) Section 6(2) of 'the Act' exclusively empowers the Bihar Sanskrit Shiksha Board to recommend a grant or a cancellation of recognition and there is nothing on the record of the proceedings to suggest that any such recommendation was made by the Bihar Sanskrit Shiksha Board to cancel the recognition granted to the petitioner through resolution dated 23.03.1985;

(e) The grant or recognition of the petitioner school can only be tested as per law existing on the date of such grant and any subsequent change in law by enforcement of the Rules cannot have a retroactive application.

While Mr. Satyam Shivam Sundaram, learned counsel appearing for the Board has exclusively relied upon the statutory Rules which were brought in force in 1993 issued on 17.09.1994,



the opposition is coming from the State Government in its Education Department and the foundation of which exclusively lies on the charge that the school was non-functional during the period 1990-93. It is proceeding herefrom that the State Government in its Education Department has contested the claim of the petitioner to justify the order of the Additional Secretary dated 08.02.1994 whereby the recognition granted to the petitioner institution alongwith 204 other schools vide resolution dated 23.03.1985 at Annexure-10 was attempted to be interfered with.

It is in compliance of the direction of this Court as present in our order dated 09.04.2019 that a supplementary counter affidavit is filed by the respondent no. 2 i.e. Special Director, Secondary Education in justification of the impugned action and it is in reference thereto that Mr. S.S. Tiwary, learned AC to AAG-15 submits that since the petitioner school was found non-functional during the period 1990-93 that after holding an enquiry the order was passed by the Additional Secretary to cancel the recognition granted to the petitioner through resolution dated 23.03.1985. It is responding to the charge that the school was not functional during the period 1990-93 that the petitioner has filed a rejoinder to the supplementary counter affidavit filed on behalf of the Education Department. The petitioner while explaining the situation has



enclosed a letter dated 29.10.1994 of the same officer i.e. the Additional Secretary, Education Department addressed to the District Magistrate, Araria and who, in reference to his earlier order dated 08.02.1994 had asked the District Magistrate to hold an enquiry on the functioning of the school and report with his comments. It is thus explained by learned counsel for the petitioner that even if an opinion was formed by the Additional Secretary on the functioning of the school, on a representation made by the petitioner, that an enquiry was directed and thus this order of cancellation was never given effect to, although the finance was stopped. It is also mentioned that subsequently an enquiry was held and the school was inspected by the SDO, Forbesganj who vide letter bearing Memo No. 1321 dated 05.11.1995 reported to the Government that the school was functional, but since no steps was taken by the Government to act thereon that the petitioner moved this Court in CWJC No. 13643 of 2000 for a direction to the Government to take steps for release of the financial aid, which writ petition was disposed with a direction to the District Magistrate to hold enquiry and act accordingly.

We have heard learned counsel for the parties and we have perused the records.



The foundation for the cancellation order dated 08.02.1994 of the Additional Secretary lies on the premise that the school was non-functional during the period 1990-93. We would be addressing on the statutory provisions later on but for the present we are persuaded to consider the subsequent letter of the Additional Secretary dated 29.10.1994 on the recommendation made by the District Magistrate in his letter dated 31.10.1994 and the Additional Secretary while making reference to the cancellation order dated 08.02.1994 directed the District Magistrate to hold a fresh enquiry and to submit his report which report stands discussed in the order of the Special Director which upholds the eligibility of the petitioner institution for recognition. It is rather surprising that even when the foundation for the cancellation order lay on the premise that the school was 'non-functional', neither the order of the Additional Secretary issued subsequently makes any reference or issues any direction to the District Magistrate to submit his report thereon nor the report so submitted makes any reference to this aspect of the matter i.e. the alleged non-functioning of the school.

This is one serious lacuna occurring in the present case in so far as the issue of cancellation is concerned, but the larger



issue which merits consideration is whether at all, the Additional Secretary had a jurisdiction to issue any such cancellation order.

We have already noted that the resolution dated 23.03.1985 whereby 205 schools were granted recognition together with the 'financial aid' is an order of the State Government under Article 166 of the Constitution, issued under the signature of the Governor. This resolution published in the Gazette, has not been interfered with by a subsequent Gazette publication and we are of a definite opinion that the Additional Secretary by an executive order dated 08.02.1994 had no jurisdiction to cause interference therein. In simple terms the order of the Additional Secretary bearing memo no. 185 dated 08.02.1994 which purports to cancel the recognition of the petitioner in supersession of the resolution dated 23.03.1985 of the State Government at Annexure-10 to the writ petition, is an order wholly without jurisdiction and having no sanction of law. The legal position in this regard is so well settled and an order of the State Government issued under Article 166 of the Constitution can only be interfered with in a like manner and not through an executive action of the Additional Secretary through the order bearing memo no. 185 dated 08.02.1994. There is complete lack of jurisdiction in the Additional Secretary to issue such cancellation



order. The other aspect of the matter is that Section 6(2) of ‘the Act’ exclusively reserves jurisdiction in the Board to recommend a case of grant of recognition or cancellation thereof and the relevant portion thereof, reads under:

“6. बोर्ड की शक्तियाँ और कृत्य –

(1) मध्यमा स्तर तक की संस्कृत शिक्षा से सम्बन्धित सभी मामलों पर राज्य सरकार को परामर्श देना बोर्ड का कर्तव्य होगा।

(2) इस अधिनियम तथा उसके अधीन बनाई गई नियमावली और नियमों के उपबन्ध के अधीन रहते हुए बोर्ड को मध्यमा स्तर तक संस्कृत शिक्षा के निदेशन, पर्यवेक्षण एवं नियंत्रण की शक्ति होगी और विशेषतया उसे निम्नलिखित शक्तियाँ होगी:—

(क) इस निमित्त बनायी गयी नियमावली के अनुसार सरकार द्वारा निर्दिष्ट संख्या के भीतर एवं राज्य सरकार के पूर्वानुमोदन से मध्यमा स्तर तक के संस्कृत संस्थाओं की मान्यता वापस लेना,

(ख) इस निमित्त बनायी गई नियमावली के अनुसार मान्यता प्राप्त संस्कृत संस्थाओं की मान्यता वापस लेना,

(ग) मान्यता प्राप्त संस्कृत विद्यालय एवं टोल्स की पंजी रखना,

... ..”

In fact the 1993 Rules much relied upon by the State in support of the purported action in its Rule 6, has a similar provision empowering the Chairman of the Board to make any such recommendation. In our considered opinion, in view of the legal position so eloquently present in the Statute which exclusively reserves power in the Board for making any recommendation for grant of recognition or withdrawal thereof, in absence of any such recommendation made by the Board on record



of the proceedings, the Additional Secretary can not usurp such jurisdiction to issue an order of cancellation as present in the order dated 08.02.1994.

Mr. Satyam Shivam Sundaram, learned counsel appearing for the Board fairly concedes that neither in the affidavit of the Board nor in the affidavit of the State Government, any such recommendation is available. In other words, the Additional Secretary while issuing the cancellation order dated 08.02.1994 has usurped the jurisdiction so clearly reserved with the Board acting through its Chairman.

In the circumstances discussed above, it is a mere completion of formality for us to hold that the order of cancellation of recognition passed by the Additional Secretary dated 08.02.1994 is an order without jurisdiction having no statutory support and considering that the grant of recognition to the petitioner and 204 other schools was under the order of the State Government by a publication of the resolution in the Gazette, the short route adopted by the Additional Secretary to interfere therewith, is an exercise void ab initio. The natural consequence of our opinion expressed above would be, that the recognition of the school shall be held continued all through as if, it was never interfered with. The petitioner school thus was entitled to financial



aid all through and a denial thereof by the State Government was an act per se illegal and the order of cancellation dated 08.02.1994 was only a perpetuation of such illegality.

For the reasons so discussed, we find the exercise leading to the order dated 15.01.2013 of the Special Director impugned in the writ petition, an exercise wholly unwarranted because the recognition of the petitioner institution never got cancelled and the Additional Secretary had no jurisdiction to interfere therewith and in such circumstances there was no need for a second round exercise which has been unnecessarily carried out simply because the statutory authorities have failed to take note of the statutory provisions.

In result, we allow the writ petition to quash the order bearing Memo No. 185 dated 08.02.1994 of the Additional Secretary and since the recognition of the petitioner institution granted by the State Government through the resolution dated 23.03.1985 has not been interfered by the State Government in the manner provided, the recognition so granted to the petitioner institution would continue all through and in which view of the matter the second round exercise which culminated in the order dated 15.01.2013 in so far as it restricts financial aid to the petitioner, is held illegal and to that extent set aside. Since the



initial recognition of the petitioner was together with financial aid which continues, the petitioner school would be entitled to the consequential benefits which may arise on such conclusion drawn. We however, find no occasion to express ourselves on the implication of the 1993 Rules or its application on the petitioner for the said Rules cannot retroactively interfere with the recognition earlier granted to the petitioner together with financial aid.

For the discussions held, we express our respectful disagreement with the judgment and order of the learned Single Judge dated 17.9.2015 passed in CWJC No. 11864 of 2013 which is accordingly set aside.

The writ petition is allowed with the directions above.

In result, the appeal is allowed but with no order as to costs.

(Jyoti Saran, J)

(Partha Sarthy, J)

Anjula/Surendra

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.07.2019
Transmission Date	NA

