

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13614 of 2017

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Mrs. Ruby Jha Wife of Anil Kumar Jha C/o Jagdish Mahto behind Wilson Lodge, Mohammadpur, Sahganj Chouraha, Mahendru, Police Station Sultanganj, District : Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The District Magistrate, Patna.
3. The Director Secondary Education Department, Government of Bihar, Patna.
4. The District Education Officer, Patna.
5. The District Programme Officer, Patna.
6. The Block Education Officer, Patna.
7. The Superintendent of Police, Patna.
8. The Officer-in-Charge, Gandhi Maidan Police Station, Patna.
9. The Principal St. Xavier's High School, West Gandhi Maidan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sandip Singh
For the Respondent/s	:	Ms. Binita Singh, SC-28
For Respondent No.9	:	Mr. K.M.Joseph

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 22-01-2019

The petitioner is mother of a student, who was in Class-VIII (A) in St. Xavier's School, Gandhi Maidan, Patna and whose name has been removed/struck off with effect from 09.01.2017 under the decision of the School on the allegation of misconduct of the said student.

2. The petitioner is seeking direction to the respondent-school to re-admit her son and declare the decision of the school to strike off the name of her son from the school



Register, as illegal, arbitrary and discriminatory. Nine months after the said decision of the School to remove the student's name from the School Register, this writ application under Article 226 of the Constitution of India has been registered on 14.09.2017. At the very initial stage of hearing of this case, keeping in mind lapse of time (eight months) from the date of removal and interest of the child so that he may not face any hostile atmosphere in the School, this Court had observed that the petitioner should take steps for getting her ward admitted in any other School. The Court had asked learned counsel for the State to have instructions whether the petitioner's son could be allowed admission in any of the Government Schools. It was informed to this Court by the learned counsel appearing on behalf of the State of Bihar, after obtaining necessary instructions that admission of the petitioner's son can be ensured in one of the best Government Schools. The petitioner, however, expressed unwillingness for her son's admission in any of the Government Schools and insisted that this Court should direct the School (Respondent No.9) to re-admit her son. The Court has been given the impression that the classes start in April and when the impugned decision was taken by the School to remove petitioner's son, on 09.01.2017, the academic session was



almost over This is why the Court had attempted to explore the possibility of petitioner's son getting admitted in one of the well-known Government Schools of Patna.

3. This is not in dispute that the School is a minority educational institution established and administered by Jesuit Fathers who are members of the Society of Jesus, a religious order of men in the Catholic Church which is a denomination of Christians, in exercise of their right under Article 30 of the Constitution of India. The School has been given the status of a minority institutions by notification dated 11.11.1978 issued by the Education Department, Government of Bihar. The School imparts education from Kindergarten (K.G.) to Senior Secondary Level and is aided by the State Government to the extent of one section/division of the High School section of the School (Classes VI to X). The petitioner's son was admittedly student of Section VIII-A of the School, which is aided section of the School.

4. The reason for taking disciplinary action against the petitioner's son relates to an occurrence, which had taken place on 07.12.2016. The petitioner's son is said to have bursted a fire cracker in the School which had caused panic among the children and injured a physically challenged child of



the School. It is said that the School Management had informed this misconduct to the petitioner's father through message over his mobile. The petitioner is said to have gone to the School, in response to the call but refused to accept the allegation of the misconduct said to have been committed by her son. It is the case of the School that an enquiry was held by the Principal in the presence of the petitioner and her son and some senior Teachers of the School, in course of which some of the children who had witnessed the bursting of the cracker were called and questioned. On subsequent date, i.e., 08.12.2016, when the Classes were over, the petitioner's son is said to have accosted a student of class V and picked him since he is said to have disclosed about the incidence of fire cracker bursting by him. On 09.12.2016, it is said, it was again reported to the School that the petitioner's son had threatened other students of the School of having disclosed his name regarding bursting of fire cracker. The Principal of the School is said to have informed the father (Petitioner's husband) of the student on 09.12.2016 regarding the incident of 8th and 9th December and by letter dated 08.12.2016, he made a request to the father of the student that the student was being put under suspension from attending the School with effect from 10.12.2016, pending appropriate



action. The Principal through his letter dated 08.12.2016 also made a request to the father of the student to withdraw his ward from his School or to show cause within one week of the receipt of notice as to why his son be not dismissed from the School for his misconduct and his name be not struck off from the School Register. The father of the student responded by writing a letter dated 15.12.2016, addressed to the Principal of the School, denying the allegation of misconduct made against his son. The Principal of the School thereafter, wrote a letter dated 29.12.2016 addressed to the father of the student reiterating correctness of the allegation of misconduct against the student and recorded that the student's parents refused to admonish and correct their ward so as to assure that he would show better and proper behaviour in School in future. The said letter dated 29.12.2016, which is at Annexure-3 of the writ petition mentioned that an attempt was made to resolve the situation by convening meeting of the executive Committee of Xavier's Parent Teacher Association(PTA) on 21.12.2016 and the Committee members upon examining the records had advised the parents to admonish the students for his misconduct and apologize and assure the School of future good conduct on behalf of their ward. The parents of the student refused to do so.



The said letter dated 29.12.2016 also takes note of certain threatening calls made by a lady, in all probability, the petitioner to the President of PTA of dire consequences for his role in PTA. In the above noted background, on the allegation of physical assault made by the petitioner's son on children of much younger age, refusal to reform and correct himself and refusal by the parents of the student to admonish and correct their ward, the School advised the parents of the student to withdraw their ward and obtain transfer certificate. The letter requested the student's father to withdraw his child from the School immediately and arrange for his education elsewhere. It also mentioned that the name of the student shall be struck off from the attendance Register of the School with effect from 09.01.2017. Denying the allegation made in the letter dated 29.12.2016, the student's father refused to obtain transfer certificate in his letter dated 05.01.2017. Through a subsequent letter dated 07.01.2017, the Principal of the School refused to accede to the request made by the father of the student. A letter dated 27.01.2017 has been brought on record said to have written by the petitioner, addressed to the Principal of the School, which indicates that the annual examination was going to be held in the month of February. The petitioner requested the



Principal to take the student back, keeping in mind the mental trauma which child was suffering from. She assured the Principal that in future no mistake shall recur. The Principal of the School responded to the petitioner's letter dated 27.01.2017 through his letter dated 30.01.2017, contents of which read thus:-

“As you failed to submit any letter(s) showing regrets for the misbehavior of your son in the school and apologizing for the action and assuring future good behavior in spite of many opportunities given to you, the name of your Master Ankit Kumar Jha has been struck off from the School Register. Kindly note that in my above said letters I had specifically given in detail the misbehavior of your son and his assaulting some of the children of class V of the school. The above mentioned two letters received from Mrs. Ruby Jha also bear witness to the above said situation.

In view of your failure to accept and admonish your ward for his serious misbehavior and physical assault on the junior children in the school and on the part of your ward no expression repentance/regret for his behavior coupled with your assurance for future good behavior was received. The name of Master Ankit Jha has been removed from the attendance register of Class VIIIA with effect from 09.01.2017. You are requested apply for and to collect Transfer Certificate for your ward from the school office at your convenience. Kindly communicate this information to Mrs. Ruby Jha, Mother of Master Ankit Kumar Jha.”



5. The petitioner approached the Principal Secretary, Education Department, Government of Bihar complaining against the decision of the School to expel the petitioner's son. Some direction was issued on 16.02.2017 by Officer on Special Duty to the Principal Secretary, requesting the District Education Officer, Patna/District Project Officer(Establishment), Patna to take necessary steps to ensure that the petitioner's son is allowed to appear for the final examination. It is the case of the petitioner that the Principal refused, however, to allow the petitioner's son to appear for the examination.

6. It is the petitioner's case that the reply dated 15.12.2016 of the father of the student has been considered behind back and, therefore, the impugned decision of the School is arbitrary and in violation of principles of natural justice.

7. Six counter affidavits have been filed on behalf of the Principal of the School. Counter affidavits have been filed on behalf of the State of Bihar also in compliance of certain orders passed by this Court which I will appropriately deal with later.

8. I must, at the very beginning take note of



Section 16 of the Right to Education Act, 2009 (hereinafter referred to as 'RTE Act') which provides that no child admitted in a school shall be held back in any class or expelled, till completion of the elementary education. Section 2(f) defines elementary education "to be an education from first class to VIII class". At the very outset, a plea has been taken on behalf of the School that RTE Act has no application to minority educational institutions in view of the Supreme Court's decision in case of ***Pramati Educational and Cultural Truist and Ors. Vs. Union of India & Ors*** reported in (2014) 8 SCC 1.

9. In view of the clear language of the Supreme Court in case of ***Pramati Education and Cultural Truist and Ors. Vs. Union of India*** (supra), there should not be any scintilla of doubt that RTE Act in so far it is made applicable to minority Schools, aided or unaided covered under Clause (I) of Article 30 of the Constitution has been held to be *ultra vires* the Constitution. For the benefit of quick reference, paragraph 55 of the Supreme Court's decision in case of ***Pramati Education and Cultural Truist and ors Vs. Union of India*** (supra), is being reproduced hereinbelow:-

“When we look at the 2009 Act, we find that Section 12(1) (b) read with Section 2(n) (ii) provides that an aided school receiving aid and grants,



whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1) (c) read with Section 2(n) (ii), an unaided school has to admit into twenty five per cent of the strength of Class I children belonging to weaker sections and disadvantaged groups in the neighborhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority



schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in Society for Unaided Private Schools of Rajasthan V. Union of India³ inasofar as it hold that the 2009 Act is applicable to aided minority schools is not correct.”

10. There is thus, no dispute over the stand of the School that the Right to Education Act shall not apply to the School.

11. In the counter affidavit filed on behalf of the School, it has been asserted that the student had shown serious lack of discipline in his behavior and his disorderly and undisciplined conduct in the class room and outside with the teachers and classmates were reported to the Principal and the Principal had repeatedly tried to correct the child and counsel him but without any success. It is also asserted that School repeatedly sought help of the parents of the student to cooperate and admonish their son to correct his behavior. The parents, however, kept on denying the allegations, refused to admonish the child and correct him. They, rather, blamed the Principal, the teachers and the children of the school and threatened them of dire consequences. The Executive Committee of the PTA had



also intervened. The parents of the student refused to give an assurance to the School to ensure future good behavior of the student. In respect of the assertion in the writ application that despite the direction issued by the District Education Officer and the District Project Officer (Establishment) Patna, to allow the student to appear in annual examination of Class VIII, a specific statement has been made in paragraph 13 of the counter affidavit that the School had agreed to arrange for the examination to be taken by the student in the presence of an officer to be deputed by the authority, his examination could not be conducted as the student did not appear on the date to take the test. This statement made on behalf of the Principal has not been rebutted by the petitioner. It is further case of the School that the rights guaranteed to the minority educational institutions including right to admit students and to take disciplinary action, where there is violation of rules and regulations. The School has relied on its Rules of Discipline to justify the decision of the School to strike off his name from the School Register after giving his parents ample opportunity to mend his conduct. A reference has been made to Rule 9(a) of the said Rules, which stipulates expulsion of a student if his conduct is found to be contrary to the discipline of the School or injurious to



atmosphere of the School. Rule 9(m) deals use of abusive language, insulting other students or bullying, engaging in physical fights, bringing crackers or any sort of harmful material to school campus as gross misconduct. There is statement made in the fourth supplementary counter affidavit filed on behalf of the School that attested copies of the various complaints/letters/information received by the Principal of the School from students and teachers regarding acts of indiscipline, act of physical violence/assault/abuse and threats by the student can be submitted to this Court for perusal, if required, discretely as making such information public would disclose identities of third parties which may expose them to a future damage. A fifth supplementary counter affidavit has been filed on behalf of the School bringing on records certain documents to vindicate its stands that the decision to remove the student from the School has been taken in the best interest of the School.

12. I have heard at length Mr. Sandeep Singh, learned counsel for the petitioner, Mr. K.M. Joseph, learned counsel appearing on behalf of the School and Ms. Binita Singh, learned Standing Counsel No.28 representing the State of Bihar.

13. At the very outset, Mr. K.M. Joseph, learned



counsel appearing on behalf of the School has raised preliminary objection over maintainability of the present writ application against the School on the ground of the same being a minority institution. The said plea I would reject at the threshold in view of the admitted position that the School receives aid from the State Government and the section in which the student was studying is admittedly aided section of the State of Bihar. In that background, the plea that this writ application should not be entertained is, hereby, rejected.

14. Mr. Sandeep Singh, learned counsel appearing on behalf of the petitioner has argued that action to strike off the name of the petitioner's son from the School Register is not only arbitrary and in violation of principles of natural justice, but the action of the School is revengeful too. In order to substantiate his submission, he contends that evidently, for an action said to have taken place on 07.12.2016, the decision to strike off the name of petitioner's son was taken on 29.12.2016. He has argued that in between, mere formality was done in the name of issuance of a show cause notice and, therefore, the decision is vitiated.

15. Mr. Jospeh, learned counsel appearing on behalf of the School, on the other hand, referring to the



materials which have been brought on record by way of counter affidavits and supplementary counter affidavits has submitted that continuance of the student in the School had been posing serious threat to the interest of other students including junior students of the School in many ways inasmuch as he was found threatening junior students of the School for disclosing his name as the person, behind bursting of the fire crackers.

16. Noticeably when the matter was taken up on 08.11.2017, considering the complexity of the dispute involved, I had directed the District Magistrate, Patna to inquire into the matter and submit a report to this Court by way of an affidavit. An affidavit has accordingly been filed on behalf of the District Magistrate from which it transpires that a four member Committee headed by A.D.M. (Special Programme), Patna was constituted to enquire into the matter with District Education Officer, District Programme Officer, Sarva Shiksha Abhiyan, Patna and Assistant Director, Child Protection Cell, Patna as members of the Committee. Following is the substance of conclusion arrived at by the said Committee:-

(I) The action of the Principal is revengeful in the wake of an earlier incident involving sister of the student in which the Principal of the School was found to be guilty. For



that reason, the Principal manufactured documents based on which he has been removed.

(II) The School Management did not produce any evidence to support the incident of bursting of fire cracker by student. The parents of the student had demanded C.C.T.V footage which was not provided though adequate number of C.C.T.V. cameras are installed in the School campus.

(III) The Principal did not produce any evidence in support of the allegation of assault made by the student nor any C.C.T.V. footage was made available.

(IV) In the proceedings of the Executive Committee of the PTA, it has been recorded that the parents of the student refused to correct the behavior of the student and admonish him whereas in fact the student's father had given in writing that his son had not committed any mistake and in future also he will not commit such mistake.

The findings in the report of the Committee has been strongly disputed by the School in one of its supplementary counter affidavits.

17. In course of hearing of this case, it has transpired that the School is covered under Section 18 of the Bihar Non-Government Secondary Schools (Take Over of



Control and Management) Act, 1981. Sub-Section (3) of Section 18 of the Act prescribes the manner in which the minority schools, recognized under sub-section(1) and sub-section(2) of Section 18 of the Act shall be managed and controlled. Clause (I) of sub-section(3) of Section 18 of the Act reads that it shall be the duty of the minority secondary schools to follow the rules and obey the orders of the State Government regarding admission and transfer of students, *discipline and punishment*, record keeping and accounting, curricular and co-curricular activities, health and cleanliness. Having noticed the said provision, the Court had directed the Principal Secretary, Education Department, Government of Bihar to inform this Court whether guidelines have been issued under Clause (I) of sub-section(3) of Section 18 of the Act or not. Following is the relevant portion of the order passed by this Court on 22.12.2017:-

“Let the Principal Secretary, Education Department, Government of Bihar, inform this Court as to whether guidelines have been issued under Clause (I) of sub-section (3) of Section 18 of the Act or not. If the guidelines have been issued, let the same be brought on record by way of affidavit. If not, the Court



would like to know from the State Government, Why?”

18. In compliance of the said order, a counter affidavit has been filed making following statement in paragraph 5 which is as follows:-

“5. That it is stated and humbly submitted that in view of provision laid down under clause (I) of sub-section (3) of Section 18 of the Bihar Non Govt. Secondary Schools (Take over of Control and Management) Act, 1981 no specific circular/guidelines have been issued by the Education Department but earlier for implementation of the said Act there was specific circular regarding decision of the managing committee with respect to the termination of any student. That circular is still part of Bihar Education Code and is mentioned in Article 273 of the Bihar Education Code which is still guiding force to deal with such matters.”

19. Article 272 of the Bihar Education Code which



has been referred to in the counter affidavit appears to have been issued in 1954 which reads thus:-

“273. Appeals.- In all cases of rustication or expulsion by the managing committee a statement of the case must be drawn up and approved by the managing committee. It should state clearly the nature of the offence committed and evidence on which the decision of the committee is based. One copy of the order passed must be forwarded immediately to the District Education Officer and another, under registered cover, to the parent or guardian of the pupil. The parent or guardian of a pupil who is punished with rustication or expulsion may appeal to the District Education Officer or Inspectress of Schools, Bihar, against the order of the managing Committee, provided that any such appeal must be received in the office of the District Education Officer or the Inspectress of schools, Bihar, within 20 days of the receipt by parent or guardian of the order against which the appeal is made. If no petition of appeal is received in the office of District Education Officer or the Inspectress of schools, Bihar, within



the specified period, the District Education Officer or the Inspectress of Schools, Bihar will confirm such order, or diminish or increase the punishment.

In cases of gross indiscipline, the District Education Officer shall have the power to rusticate a student, and any appeal from the parents or guardians of such students shall lie to the Regional Joint/Deputy Director of Education, whose decision shall be final.

In order to deal with the misbehavior of students sent up for the Secondary school examination, who are under no obligation to attend the school, the good conduct certificate granted by the Headmaster/Principal may under orders of the District Education Officer be withdrawn or withheld. This would disqualify such students from appearing at an examination or being eligible for appointment to any public service. The District Education Officer will have the power to direct a Headmaster/Principal to withhold or withdraw a good conduct certificate in case of proved misbehavior on the part of students.”

20. As has been noticed, a Committee constituted



by the District Magistrate has recorded a finding that removal of the students was not justified and was rather for extraneous consideration. It is true that a minority institutions can adopt its own procedure for admitting students but at the same time it is trite that every action of even minority institutions must conform to such provisions which governed them.

21. In view of the conflicting materials on record and the nature of dispute, which have been raised, the Court cannot reach a definite conclusion as to whether action of the School Management of removal of the student from the School was *bona fide* or not. It can, however, not be forgotten that based on standards prescribed in the convention on the 'rights of child', adopted by the General Assembly of United Nations known as **Standard Minimum Rules or Administration of Juvenile Justice, 1985 (commonly known as Beijing Rules), the United Nations Rules for the protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation**, to which this country is a signatory the Juvenile Justice (Care and Protection of Children) Act, 2015, has been enacted making adequate provisions to the effect that even a juvenile in conflict with law does not suffer from any stigma; on a mere allegation of



bursting of fire crackers, the School administration took a decision to strike off the name of the child from the School Register. Nevertheless, for the present I am not commenting upon the compulsion, if any, under which the School Management has taken a decision to strike off the name of the student from the School Register.

22. What has been done by the School administration, now with the delay caused by the parents of the student cannot be undone by this Court because no direction can now be issued for reinstating the student in the School, nearly eight months after he was removed, as the writ application itself was filed on 14.09.2017.

23. However, in the background of the fact that there is a report of the Committee constituted by the District Magistrate, Patna which does not justify the action of the School Management, I have considered it appropriate to issue certain directions to the State Government for effective implementation of the provision under Section 18 of the Act.

24. Accordingly, I direct the Principal Secretary, Education Department, Government of Bihar, to ensure issuance of exhaustive guidelines to be followed strictly by the minority institutions, without interfering with the rights of minority



institutions to establish and manage as envisaged under Articles 29 and 30 of the Constitution of India. In view of the report of the four member Committee, let a decision be taken by the State Government whether action as contemplated under Section 18 of the Act against the School is desirable or not. This must be done within six months from the date of passing of the present judgment and order.

25. This application stands disposed of with the aforesaid observations and directions.

26. There shall be no order as to costs.

27. Let this order be communicated to the Principal Secretary, Education Department, Government of Bihar.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	AFR
CAV DATE	07.05.2018
Uploading Date	28.01.2019
Transmission Date	N/A

