

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13724 of 2017

Swami Nath Babu Inter College. Son of - Late Nathu Sah, Resident of Village- Batardeh, Tola Chainpur, P.O. P.S.- Barauli, District- Gopalganj Bihar.

... .. 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, Gopalganj.
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

Appearance :

For the Petitioner/s	:	Mr.Anjani Kumar,Advocate Mr.Shafiur Rahman, Advocate
For the State	:	Mr.Madanjeet Kumar-GP-20
For BSEB	:	Mr. Ranjit Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 05-07-2019 The issue raised in the present writ petition is no more res integra. This court has occasion to decide the issue of withdrawal of affiliation granted to the institution. The Court on consideration of the mandatory requirement as to opportunity of hearing before taking any adverse decision cancelling affiliation or withdrawal of affiliation has held out that order withdrawing affiliation presupposes opportunity of hearing. It appears from the materials available on record that the respondents have taken



decision without opportunity of hearing to the petitioner in terms of affiliation Regulation. Similar matter was considered by this Court in CWJC No. 1965 of 2019 (Manjoor Alam Vs.The Bihar School Examination Board & ors) and analogous cases vide order dated 28.6.2019, which reads as follows:-

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

2. Mr. P.K. Shahi, learned Senior Counsel appearing on behalf of the petitioners 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.

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 estopped 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 ad 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 petitioner institution. 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.”

In view of the decision of this Court in CWJC No. 1965 of 2019, the present writ petition is disposed of. The order contained in Annexure-1 is quashed. The respondents have to restore the status existing prior to Annexure-1.

With the aforesaid, the writ petition stands disposed of.

This order will not come in the way of the respondents in taking fresh decision.

(Anil Kumar Upadhyay, J)

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