

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16264 of 2019

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Mahtheen Maa (Plus 2) Ucch Madhyamik Vidayalya, Bihiya, Bhojpur through its Secretary, Shatrudhan Sharma, son of Bajinath Sharma, resident of Ward No. 6 Main Road Bihiya, Behea, P.S. Bihiya, District- Bhojpur.

... .. Petitioner/s

Versus

1. The Bihar School Examination Board Buddha Marg, Patna through its Chairman, Patna.
2. The Chairman, Bihar School Examination Board, Patna.
3. The Secretary, Bihar School Examination Board, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Shama Sinha, Advocate
For the Respondent/s : Mr. Lalit Kishore, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 08-08-2019 Heard learned counsel for the petitioner and the respondents.

The issue raised in the present writ application is no more *res integra*. Earlier, this Court has occasion to decide the issue in C.W.J.C. No. 5399 of 2019 vide order dated 25.06.2018.

While hearing C.W.J.C. No. 1965 of 2019, Mr. Satyabir Bharti, learned counsel appearing on behalf of Bihar School Examination Board submits that certain legal aspect of the matter was not considered by this Court while deciding C.W.J.C. No. 5922 of 2019. This Court once again considered the submission of Mr. Satyabir Bharti, learned counsel appearing on behalf of Bihar School Examination Board and



after noting his submissions passed the following order:

“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 granting affiliation simply because there is change in the guard, initial grant of affiliation cannot be disputed as bad without compliance of natural justice.

10. Now the new Chairman cannot claim 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.”

With the aforesaid, the present writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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