

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.946 of 2015

In

Civil Writ Jurisdiction Case No.1727 of 2009

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1. The State Of Bihar through the Principal Secretary, Department of Human Resources Development, Government of Bihar, Patna.
 2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
 3. The Special Director (Sanskrit), Secondary, Primary and Adult Education Department, Government of Bihar, Patna.

... .. Appellants

Versus

1. Saraswati Bhawan Jai Kant Madhyamik Sanskrit Vidyalaya, Chikna thorough its Headmaster, Hrishikesh Jha, Son of Shri Sitaram Jha, Resident of Village-Chikna, P.S.- Ghoghardiha, District Madhubani.
2. The Chairman, Bihar Sanskrit Shiksha Board, Patna.
3. The Secretary, Bihar Sanskrit Siksha Board, Patna.

... .. Respondents

with

Letters Patent Appeal No. 757 of 2017

In

Civil Writ Jurisdiction Case No.6631 of 2016

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1. The Chairman, Bihar Sanskrit Shiksha Board, Patna.
 2. The Secretary, Bihar Sanskrit Shiksha Board, Patna.

... .. Appellants

Versus

1. Ramanuj Sanskrit Uchcha Vidyalaya, Ara, Bhojpur through its Assistant Om Prakash Mishra, S/o Late Shiv Kumar Mishra, resident of Mohalla-Mohanpur, P.S.- Nawada, District- Bhojpur.
2. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
4. The Joint Secretary to the Government, Education Department, Govt. of Bihar, Patna.
5. The Special Director (Sanskrit) Secondary, Primary and Adult Education Department, Govt. of Bihar, Patna.
6. The Deputy Secretary to the Government, Education Department, Government of Bihar.

... .. Respondents

with

Letters Patent Appeal No. 760 of 2017

In

Civil Writ Jurisdiction Case No.6742 of 2016



1. The Chairman, Bihar Sanskrit Shiksha Board, Patna.
2. The Secretary, Bihar Sanskrit Shiksha Board, Patna.

... .. Appellants

Versus

1. Ramdeo Sanskrit Prathmik Vidyalaya, Barhara, Ara through its Assistant Teacher Smt. Bimla Tripathi, W/o Shri Prem Narayan Tripathi, resident of Mohalla- New Area Sheoganj, P.S.- Ara, District- Bhojpur.
2. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
4. The Joint Secretary to the Government, Education Department, Govt. of Bihar, Patna.
5. The Special Director (Sanskrit) Secondary, Primary and Adult Education Department, Govt. of Bihar, Patna.
6. The Deputy Secretary to the Government, Education Department, Government of Bihar.

... .. Respondents

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with
Letters Patent Appeal No. 758 of 2017
In
Civil Writ Jurisdiction Case No.6567 of 2016

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1. The Chairman, Bihar Sanskrit Shiksha Board, Patna.
2. The Secretary, Bihar Sanskrit Shiksha Board, Patna.

... .. Appellants

Versus

1. Sidhnath Shankar Sanskrit Prathmik Vidyalaya, Shivganj Ara, through its Acting Headmaster Tribhuwan Tiwary, S/o Late Nandlal Tiwary, resident of Village- Babhnauli, P.S.- Ara (Sadar), District- Bhojpur.
2. The State of Bihar through the Principal Secretary Education Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
4. The Joint Secretary to the Government, Education Department, Govt. of Bihar, Patna.
5. The Special Director (Sanskrit) Secondary, Primary and Adult Education Department, Govt. of Bihar, Patna.
6. The Deputy Secretary to the Government, Education Department, Government of Bihar.

... .. Respondents

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Appearance :

(In Letters Patent Appeal No. 946 of 2015)

For the Appellant/s : Mr. Ram Kishore Singh, Adv.
For the Respondent/s : Mr.



(In Letters Patent Appeal No. 757 of 2017)

For the Appellant/s : Mr. Satyam Shivam Sundaram, Adv.

For the Respondent/s : Mr. Ashutosh Ranjan Pandey, AAG15

(In Letters Patent Appeal No. 760 of 2017)

For the Appellant/s : Mr. Satyam Shivam Sundaram, Adv.

For the Respondent/s : Mr. Ashutosh Ranjan Pandey, AAG15

(In Letters Patent Appeal No. 758 of 2017)

For the Appellant/s : Mr. Satyam Shivam Sundaram, Adv.

For the Respondent/s : Mr. Ashutosh Ranjan Pandey, AAG15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 09-01-2019

Heard Mr. Ashutosh Ranjan Pandey, learned AAG-15 for the appellant in L.P.A.No. 946/2015, Mr. S.S.Sundaram appears for the appellant Bihar State Sanskrit Shiksha Board, Patna (hereinafter referred to as 'the Board') in remaining appeals. Mr. Hemant Kumar Jha, learned counsel appears for the respondent- writ petitioners, in all the appeals.

While L.P.A. No. 946 of 2015 arises from the common judgment and order dated 10.04.2012 passed by a learned Single Judge in CWJC No. 1727/2009 and analogous cases, the remaining three appeals arise from the order passed by a learned Single Judge allowing the respective writ petitions in the light of judgment and order passed in CWJC No. 1727/2009 and analogous cases but making the order conditional on the outcome of the appeal arising from LPA No. 946/2015.



The judgment and order of the learned Single Judge in CWJC No. 1727/2009, which was heard analogous with a batch of 13 writ petitions raising issues relating to cancellation/withdrawal of recognition of no less than 86 Sanskrit schools is well discussed and takes note of the stand of the parties as well as the status of the schools, before recording final opinion. In fact according to Mr Hemant Kumar Jha, learned Counsel representing the respondent- writ petitioners, the order passed by the learned Single Judge on the writ petitions and in favour of the writ petitioners have not been put to challenge by the Board rather it is the State who has chosen to appeal against the common judgment and order dated 10.04.2012 passed on the batch of writ petitions, whereby, while CWJC No. 1727/2009 was allowed, the other writ petitions were directed for posting later on.

We make this observation consciously because paragraph 7 of the judgment passed on the batch of writ petitions records the stand of the State Counsel before the learned Single Judge in which he has stated that the State Government has a very limited role in the matter of grant of recognition or de-recognition of Sanskrit schools inasmuch as it



is a decision of the Board which has to be actually approved or disapproved by the State.

This Court is at a loss to appreciate as to how the State having taken a stand before the learned Single Judge on the issue of cancellation/withdrawal of recognition by shifting the onus on the Bihar State Sanskrit Shiksha Board, has chosen to appeal against the common judgment and order even when the Board upon whom onus had shifted, have not chosen to move in intra-Court appeal in so far the judgment in CWJC No. 1727/2009 is concerned rather as informed by the parties, 'the Board' has proceeded to implement the judgment and order of the learned Single Judge and even paid salary in so far as the petitioner in CWJC No. 1727/2009, is concerned.

As regarding the contest on inter-party merits, we are persuaded to reproduce paragraph 84 onwards of the judgment which takes notice of the issue in so far as the petitioner in CWJC No. 1727/2009, is concerned and a cursory glance of the opinion recorded by the learned Single Judge would show that it is on a limited ground that the school in question did not possess its own land and building that the order of de-recognition had been passed despite the fact that the schools were running with due recognition since last more than 80



years. Since the objection raised is an issue of fact, we are persuaded to reproduce the relevant paragraphs of the judgment which would confirm that the objection lacks foundation. The learned Single Judge has taken note of the finding of a Three-Member Committee to demolish the objections so raised on this count and has consequentially proceeded to quash the orders impugned in the writ petition because it ran contrary to the finding of the Three-Member Committee report.

“84. Heard Mr. Hemant Kumar Jha, learned Counsel for the petitioner, Mr. A.P. Sinha, learned counsel for the Board and Mr. Kundan Bahadur Singh, learned counsel for the State.

85. Mr. Jha has submitted that the recognition of the school petitioner has been cancelled after more than 80 years of its being recognized on a wholly flimsy ground without there being any specific show-cause in terms of rule 6 of the 1993 rules. He has also relied on certain findings of the Three Men Committee as with regard to the number of students and the shape and size of the existing building of the schools, which according to him would not warrant such a drastic action of de-recognition of this very old school.

86. Learned counsel for the Board and learned counsel for the State have, however, dwelt upon the aspect that if the school does not fulfil the basic requirement as laid down in the 1956 resolution, it



cannot be allowed to have its recognition. In this regard, they too relied on the inspection report of the Three Men Committee constituted by this Court and have submitted that if the State Government after considering the findings of the Three Men Committee Report and the recommendation made by the Board thereon had taken a decision, the same would require no interference.

87. Having regard to the materials on record that this School was established in the year 01.04.1926 and was a recognized Sanskrit School from the very inception i.e. 01.04.1926, this Court would find it difficult to approve the solitary reason for de-recognition of this School by the State Government as explained in the office order dated 05.03.2012, wherein, the reason for de-recognition of the School reads as follows:-

“बिहार संस्कृत शिक्षा एशोसियेशन का गठन स्वरूप एवं कृत्य बिहार सरकार शिक्षा विभाग का संकल्प (Resolution) No. 4/24 दिनांक 11.08.1956 के आलोक में आधारभूत संरचना का अभाव रहने के कारण प्रस्वीकृति प्रदान नहीं की जा सकती है।”

88. Counsel for the State in this regard has mentioned that it is only the following two requirement of the Government resolution dated 11.08.1956, which has weighed upon the Government refusing to restore the recognition of the petitioner School namely, Saraswati Bhawan Jai Kant Madhyamik Sanskrit Vidyalaya, Chikna in the district of Madhubani. He has in this regard referred to paragraph no. 15(iv) and 15(v) under the heading



General condition of Recognition of the
aforementioned Government resolution dated
11.08.1956 reading as follows:-

“That it is housed in a suitable building of its own,
which is free from objection on sanitary grounds
and affords sufficient accommodation;

That in case it has no building of its own, the
management provides a satisfactory guarantee or
proof that it will have an independent building of its
own within a reasonable period of time;”

89. In the considered opinion of this court, the
Government could not have used the
aforementioned two conditions for derecognizing
the School of the petitioner, inasmuch as, the Three
Man Committee constituted by this Court consisting
of the Secretary of Bihar, Sanskrit Shiksha Board,
the Deputy Director of Secondary Education and the
District Education Officer of Madhubani in their
joint report dated 29.03.2011, on the basis of the
inspection of the School dated 21.02.2011 had
found the School to have not only one bigha of land
but also a constructed building of four rooms with
asbestos roof at the top.

90. This Court is not going into the other
findings of the Committee because the Government
had rejected the case of restoring of recognition to
the petitioner School only on the ground of lack of
building by way of insufficient infrastructure. As
noted above, the School has not only land of its own
but also building having four rooms. There is also



no difficulty in understanding that the requirement of the School being only of having three classrooms for class-8, 9 and 10 can be easily met by those four rooms. In fact, when 1956 Government resolution does not provide any yard-stick of number of rooms and the nature for construction of the building, the petitioner School cannot be derecognized on the ground of lack of building having four rooms as found by the Three Man Committee constituted by this Court.

95. It has to be kept in mind that when in the year 2002, the first order of derecognition was passed the number of students was not made the ground for derecognition and in fact only the lack of building and land was made the basis for School being derecognized. In fact, the said reason was again reiterated in the subsequent order of the Bihar Sanskrit Shiksha Board dated 21.07.2008, which had lead to filing of this writ application. Thus, in view of the material findings recorded by the Three Man Committee constituted by this Court, the only reason for derecognition of the petitioner School in the impugned order either passed on 21.07.2008 or by the present order of the Government dated 05.03.2012 cannot be sustained when the School is said to have its own land and building sufficient for its finding.

96. Thus, in the light of the aforementioned individual considerations as also the reasons already given in the preceding paragraphs while making



general observations with regard to the impugned orders, it has to be held that the impugned orders as with regard to the de-recognition of the school petitioner is bad on fact and in law and is, accordingly, quashed. The recognition of the petitioner school is directed to be restored with all consequential benefits to be extended to the petitioner school including the payment of salary of the approved teaching and non-teaching staff of this school as was being made to them prior to 15.06.2002. This exercise of payment of arrears and current salary must be completed within a period of three months from the date of receipt/production of a copy of this order.”

(Emphasis is ours)

Despite repetition we reiterate that the order allowing the writ petition has not aggrieved the Board even when it was their stand as regarding the land and building available with the school which was the foundation for the order withdrawing recognition, it is the State who has chosen to come in this intra-Court appeal and a reading of the grounds in this appeal would confirm that they have demonstrated nothing to contest the finding of the learned Single Judge. In fact the pleading in appeal is absolutely silent on the opinion of the learned Single Judge on the building and land available with the school.



We also notice that even when LPA NO. 946/2015 arises from the order passed in CWJC NO. 1727/2009 which exclusively deals with the issue of recognition of Saraswati Bhawan Jai Kant Madhyamik Sanskrit Vidyalaya in the District of Madhubani, the State has tried to expand the scope of the appeal by referring to the case of other school which was not a subject matter of CWJC No. 1727/2009. It is taking note of this relevant aspect of the matter that this Court tried to ascertain from Mr. Pandey as to the reasons which has aggrieved the State to file this intra-Court appeal because there is nothing on record which demolishes the fact finding Three-Member Committee report supporting the land available with the school as well the building thereon which has persuaded the learned Single Judge to record his opinion but despite the indulgence given and the pendency of this matter since last four years, nothing could be placed which causes dent on the opinion of the learned Single Judge. Our discussions above are sufficient to indicate the frivolity of the appeal arising from LPA No. 946/2015 and the lack of merit therein. Accordingly, LPA No. 946/2015 is dismissed.

In so far as the remaining three appeals are concerned a rather interesting issue arises. These intra-Court appeals i.e.



LPA No. 757/2017, LPA No. 758/2017 and LPA No. 760/2017 have been preferred by the Sanskrit Siksha Board feeling aggrieved by the opinion of a learned Single Judge which is resting on expression present in the judgment and order passed in CWJC No. 1727/2009.

The learned Single Judge while allowing the writ petition in the light of the judgment and order passed in CWJC No. 1727/2009 has made the order conditional on the outcome of LPA No. 946/2015 which we have dismissed and the issue of payment was left for disposal by the respondent on any such demand made which according to Mr. Hemant Kumar Jha has since been raised. The order sheet in LPA No. 757/2017 dated 28.03.2018 would reflect that the Board was directed to file an affidavit as to whether the order passed by the learned Single Judge in CWJC No. 1727/2009 has been implemented by the State Government/Board and in case it has been implemented why the benefit be not extended to the writ petitioners who are respondents in the remaining three appeals arising from LPA No. 757/2017, LPA No. 758/2017 and LPA No. 760/2017.

A supplementary affidavit was filed on behalf of the Board in compliance of the direction present in the order dated 28.03.2018 in LPA No. 757/2017. A plain reading of the stand



taken by the Board in the supplementary affidavit filed in LPA No. 757/2017 from paragraph 4 onwards would confirm that steps have been taken by the Board for implementing the order passed by the learned Single Judge in CWJC No. 1727/2009. Obviously if the Board has not chosen to contest the order passed by the learned Single Judge in CWJC No. 1727/2009 they have no other option but to implement the order. To that extent query made by this Court in the order dated 28.03.2018 draws in favour of the writ petitioners.

In our opinion, once this aspect stands at a close and the Board accepts that the exercise has been undertaken to implement the order of the learned Single Judge in CWJC No. 1727/2009, the writ petitioners, who are respondent in LPA No. 757/2017, LPA No. 758/2017 and LPA No. 760/2017 also become entitled to the same relief in terms of the order passed by the learned Single Judge.

Mr. S.S.Sundaram, learned Counsel appearing on behalf of the Board draws our attention to the enclosure to the supplementary affidavit to submit that indeed in terms of the orders/liberty present in the judgment and order of the learned Single Judge in CWJC No. 1727/2009 and analogous cases, exercise has been initiated for its implementation and in which



direction the school in question which was found wanting on its pre-requisite for a valid recognition had been asked to support their stand but in so far as the writ petitioner i.e. the respondents in LPA No. 757/2017 is concerned whose claim stands discussed at Agenda No. 14, its very existence was found to be doubtful and thus the restoration of recognition was not possible and a decision was taken in this regard. He further submits that in so far as the writ petitioners who are respondent(s) in the other two appeals are concerned, certain queries have been made from them and whereafter the order would be passed.

Learned counsel has been fair enough to submit that the appeal so preferred by the Board can accordingly be disposed of in the light of the exercise undertaken by the Board and in case the respondent-writ petitioner concerned, is aggrieved by the decision so taken, they will be at liberty to take recourse to the remedy so available to them.

In our opinion, the stand taken by Mr. Sundaram in LPA No. 757/2017, LPA No. 758/2017 and LPA No. 760/2017 is reasonable and that exercise has already been undertaken by the Board in the light of the directions present in the judgment and order passed by the learned Single Judge in CWJC No.



1727/2009 and analogous cases, we grant liberty to the writ petitioners to move the appropriate forum in case the decision taken by the Board runs counter to their interest. While observing such, we would direct the Board to take final decision within three months from today.

For the reasons and discussions made above, while we dismiss LPA No. 946/2015, LPA No. 757/2017, LPA No. 758/2017 and LPA No. 760/2017 are accordingly disposed of with the directions/liberty above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
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