

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1876 of 2018

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Anant Kumar Jain, Son of Late Deopati Mishra, Resident of Village-Baluan,
P.S.-Daulatpur, P.S.-Arah Muffasil, District-Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Govt. of Bihar, New Secretariat Patna.
3. The Director, Primary Education, Education Department, Govt. of Bihar.
4. The District Magistrate, Bhojpur at Arah.
5. The District Development Commissioner, Bhojpur at Arah.
6. The District Programme Officer Bhojpur at Arah.
7. The District Education Officer, Bhojpur at Arah.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chakrapani, Advocate
		Mr. Madhuresh Singh, Advocate
For the State	:	Mr. Madhaw Prasad Yadav -GP-23

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 09-08-2019

Heard learned counsel appearing on behalf of the
petitioner and learned counsel appearing on behalf of the State.

2. The petitioner is aggrieved by the decision of the respondent-Director, Primary Education, contained in memo No. 1190 dated 8.12.2017, Annexurer-6 to the writ petition by which he has rejected the claim of the petitioner. The order was passed pursuant to the direction issued on 3.5.2017 by this Court in CWJC No. 3800 of 2016. After the order of the Writ Court, the matter was examined by the Director, Primary Education. The Director Primary Education considered the report contained in letter No. 1546 dated 2.11.2017 and the document submitted by the petitioner in connection with the same. The Director has noted that as prescribed under the Rules, the land should have been registered in the name of



the school or it should have been registered in the name of Governor of Bihar, but it is recorded in the name of Anant Kumar Jain, Secretary of the School. The second objection was noted that there is no evidence that in the past the petitioner has claimed for minority status. The third objection was that the institution was not recommended by the District Planning Committee and the fourth objection noted by the Director was that as per the rules for grant of minority Status the institution was required first to obtain recommendation of the District Elementary School Committee and thereafter the proposal must go through the Regional Deputy Director of Education of the State Government but the same was not done in the present case and on these grounds the Director, Primary Education has rejected the claim of the petitioner

3. On consideration of the submissions made on behalf of the parties and different documents annexed in support of their claim for the purpose of considering the validity of the order under challenge, the Court is required to test the decision of the Director, Primary Education for rejecting the claim.

4. Mr. Chakarpani, learned counsel appearing on behalf of the petitioner has contended that objection as to registration of land in the name of the school or the Governor is no more exist as the petitioner-institution has taken step for registration of the land in



the name of the Governor of Bihar. So far as the second objection that the petitioner-institution has never approached earlier is concerned, Mr. Chakrapani has placed reliance on Annexure-3 which is letter issued by the District Programme Officer, Bhagalpur on 12.1.2015. The letter dated 12.1.2015 is acknowledgment of the fact that the case of the petitioner for declaration of minority status to the institution in question was also considered earlier as is evident from letter of the District Programme Officer, Bhagalpur. Therefore, the second objection is unsustainable. So far as the third objection that the institution was not recommended by the District Planning Committee is concerned, Mr. Chakrapani has placed reliance on 3rd supplementary counter affidavit in which there is admission on the part of the respondents that the District Planning Committee is non-functional for the last several years. The third objection as such has no relevance in the decision making process when the Committee itself is not functional therefore, the aforesaid objection cannot be a ground for rejection of the claim. So far as the 4th objection is concerned it appears that after hearing on different dates the Director, Primary Education has taken objection to decide the status of the institution under the order of the High Court and once the petitioner has approached the Director in terms of the order passed by this Court, it would be gross contempt of this Court to



raise objection that the petitioner has approached the Director directly instead of approaching the Director through proper channel.

5. Learned counsel for the State would submit with reference to Annexure-7 that the institution in question was granted permission on 5.5.1996 in anticipation of approval of the District Planning Committee but till date there is no recommendation of the District Planning Committee and as such, the petitioner-institution does not deserve declaration of institution as minority institution. Under the scheme of the National Commission for Minority Education Institutions Act, 2004, the appropriate Government is under obligation to notify the appropriate authority for appropriate decision as to grant of permission for the purpose of grant of minority status.

6. Learned counsel for the State, with reference to Annexure-B to the counter affidavit, would submit that the notification dated 31.12.1982 under Section 8 of the Bihar Non-Government Elementary Schools (Taking over of Control) Act, 1976, the appropriate authority has been notified and procedure has also been prescribed for submission of application. As noted above, the procedural requirement cannot be a ground to reject the application of the petitioner when the petitioner has approached the Director for appropriate declaration in terms of the direction of this



Court. Moreover, the notification dated 31.12.1982 cannot be taken as requirement under the 2004 Act and as such the Court does not find any substance in the objection raised by the respondent-State.

7. Learned counsel for the State lastly submitted that the petitioner remedy by way of appeal and therefore, the present application is not maintainable. Learned counsel for the State has referred to the provisions of the Right to Free and Compulsory Education Act, 2009 to defeat the claim of the petitioner. The scheme contemplated under the Right to Free and Compulsory Education cannot rise higher than Articles 29 and 30 of the Constitution. Right to establish educational institution of their own choice is guaranteed as fundamental right and it has been held in numerous cases by the constitutional and larger Bench of the Apex Court that the right of the minority to establish minority institution is not illusory but real right and that cannot be defeated.

8. Considering the totality of the fact situation particularly the judgment of the Apex Court in the case of **The State Of Uttar Pradesh vs Mohammad Nooh: AIR 1958 (SC) 86** where the Supreme Court has considered three exceptions to the rule of exhaustion of alternative remedy which admits involvement of fundamental right as one of the exception. The objection of the State as to alternative remedy is misconceived as in the instant case



there is violation of fundamental rights guaranteed under Articles 29 and 30 of the Constitution and therefore, the right to statutory appeal is no bar in entertaining the present writ petition.

9. As discussed hereinabove, considering the reason shown for rejecting the application of the petitioner, the Court is of the considered view that the decision of respondents is most unreasonable and falls in the category of arbitrary exercise of power. Such decision is unsustainable in the eye of law as per the provisions of Article 14 of the Constitution of India.

10. For the reasons discussed hereinabove, the writ petition is allowed. The decision of the respondent-Director, Primary Education, contained in memo No. 1190 dated 8.12.2017, Annexurer-6 is quashed. The respondents are hereby directed to take fresh decision with regard to the status of the petitioner-institution within the parameters of Articles 29 and 30 read with the provision of National Commission for Minority Education Act, 2004. Fresh decision must be taken within a period of thirty days from the date of receipt/production of a copy of this order.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.08.2019
Transmission Date	NA

