

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1421 of 2016

In

Civil Writ Jurisdiction Case No.8519 of 2014

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Ram Nath Prasad S/o Pradip Prasad resident of village - Tiwari Tola, P.S. Kanti, District Muzaffarpur, Presently the Chairman of Managing Committee of Middle School, Kanti under the District of Muzaffarpur

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Bihar, Vikas Bhawan, Patna
3. The Director, Primary Education, Bihar Vikas Bhawan, Patna
4. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur
5. The District Education officer, Muzaffarpur, District Muzaffarpur
6. The District Programme officer Establishment , Muzaffarpur, District - Muzaffarpur

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Shashi Bhushan Singh, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

22 08-01-2020 Heard learned counsel for the appellant and learned counsel for the respondents.

This Letters Patent Appeal is against the part of the order dated 30.03.2016 passed in CWJC No. 8519 of 2014 by a learned Single Judge of this Court by which the Court has dismissed the writ application merely on the ground of delay.

The operative portion of the impugned judgement



reads as under:

"In addition to that the take-over of such privately managed schools was under a statute, which was Act 30 of 1976 and is known as the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 and the said Act is a complete code and the decisions with regard to such take-over had to be taken at the relevant time. Since such take-over was a one-time exercise and not an on-going exercise, therefore, no mandamus will be issued after more than four and a half decades. The Department of Education had done the necessary exercise at the relevant time in the decade of 1970 and the schools, which were taken over, were duly notified. Even if it is accepted that there was a recommendation or a decision taken on 28th of April, 1973 and despite the same, if the school was not included in the list, the cause of action arose then and the issue should have been agitated in near proximity to the cause of action.

Besides opposing the writ application of the petitioner, on behalf the official respondents, on the maintainability at this juncture, even on the merits of the matter, a statement has been made that an inspection was carried out of the school by the Block Development Officer, Saraiya and the said report would indicate that the school has no registered land; it does not have any library and teaching equipments and materials; and there is hardly any infrastructure to establish the status or bona fide of the school. The detailed report is Annexure-A to the counter affidavit filed on behalf of the Respondent No.5, i.e., the District Education Officer, Muzaffarpur."

In the appeal, learned counsel vehemently argues that



the petitioner stands discriminated inasmuch as under the similar circumstances the Government has exercised its discretion in taking over the institution. Also the change in the policy would not make any difference and the institution in question ought to have been taken over by the State Government.

The Government of Bihar had come out with a one time policy of taking over educational institutions under and by virtue of Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976. It is a complete Code in itself. It is a one time measure only to facilitate and fulfil the constitutional obligation of providing quality education to all the children residing in the State.

The learned Single Judge has held that the petitioner institution did not fulfil the eligibility criteria as per the report (Annexure-A) that of the District Education Officer.

We find no reason to interfere with such finding of fact.

That apart, it cannot be said that the Act itself conferred any indefeasible right upon the petitioner institution being taken over. It is not a case of legitimate expectation or promissory estoppel.



We also notice that now there is a change in the policy and the Government is no longer taking over any educational institution.

For the said reasons, simply because at one point of time, the Government had taken over an institution which is alleged to have been similarly situated, cannot be a reason for us to interfere with the impugned judgement or allow the petition and issue a mandamus for the institution to be taken over.

The application is dismissed.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

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