

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7952 of 2020

Private Schools and Children Welfare Association having its registered office at Moh Samanpura, Post B.V. College, Police Station Shashtrinagar, District Patna 800014 through its President Syed Shamael Ahmad, aged about 54 years (Male), son of Late S.M. Jamil Ahmad @ Late Jamil Ahmad, resident of Jamil Compound Samanpura, Raja Bazar, Patna - 800014.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Home, Government of India, New Delhi.
2. The State of Bihar through the Chief Secretary, government of Bihar, Patna.
3. The Principal Secretary, Department of disaster management, government of Bihar, Patna.
4. The National disaster management authority through the competent Officer, New Delhi.
5. The State Disaster Management authority through the Chief executive officer, Bihar Patna.
6. The District Magistrate, Patna.
7. The District Education Officer, Patna.
8. The Sub - Divisional Officer, Patna.
9. The Public Relations Officer, Patna.
10. The Senior Superintendent of Police, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V.Giri, Sr. Advocate. Mr.Kumar Dhirendra Pratap Singh, Advocate Mr. Sumit Kumar Jha, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG Mr. Kumar Priya Ranjan, Advocate Mr. Gyan Prakash Ojha, Advocate.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-09-2020

Petitioner has prayed for the following relief(s):-

“i. To issue an appropriate writ(s)/



order(s)/direction(s) in the nature of Certiorari for quashing the Clauses 1,2,6 &7 in the order dated 10.04.2020 issued vide memo number 3421/go by the District Magistrate, Patna (Annexure- 6) for being ultra vires the provisions of the Act, beyond the jurisdiction and authority of law and violative of Articles 14 and 19 of the Constitution of India;

ii. To issue an appropriate writ(s)/ order(s)/ direction(s) in the nature of Mandamus commanding the respondent of amend the order dated 10.04.2020 issued vide memo number 3421/go by the District Magistrate, Patna (Annexure- 6) so as to amend/remove the directions, as described in Clause 1 to 7, for being ultra vires the provisions of the Disaster Management Act, 2005 (hereinafter referred to as the "Act"), beyond the jurisdiction and authority of law and violative of Articles 14 and 19 of the Constitution of India;

iii. To issue an appropriate writ(s)/ order(s)) direction(s) in the nature of Certiorari for quashing the letter issued vide memo, 1173/aa.pra dated 25.03.2020 by the Principal Secretary, Department of Disaster Management, Bihar (Respondent No. 3 for being illegal, without jurisdiction and beyond the realms of the statutory ambit of the Act.

iv. For issuance of writ in the nature of Mandamus or any other appropriate writ directing the respondents to provide fund in the shape of relief to petitioners in meeting its financial obligations such as salary, other regular incidental expenses of



running school and financial institution liabilities burdened on petitioners due to the illegal arbitrary, capricious and coercive impugned orders of the respondents or in alternative petitioners be allowed to recover the due amount in installments from parents of students together with the regular charges in order to fulfill its obligations and to achieve its objectives.

v. For reading down the conditions of clause 1,2,5,6, and 7 of the order issued by the District Magistrate Patna (respondent number 6) number 3421/go dated 10.04.2020 being highly discriminatory, iniquitous, unreasonable and coercive in nature and as such violative of protections provided in the Constitution of India as the part of that order is creating Chaos amongst the parents of students so far payment of school fees etc is concerned to private unaided schools and the parents were liable to make payment of school fees are deliberately delaying and avoiding the due payments which are essential for the petitioners to keep their schools operational and meet the incidental obligations.

vi. For further holding and a declaration that the petitioner is/are entitled to raise / charge tuition fee and such other charges against which services are being provided to the students as regular classes through video application are being conducted and study materials, assignment, project works are being provided to being provided to students by the petitioner which involves establishment of involves establishment



of infrastructure, participation, efforts and contribution of teachers and other staffs.

vii. For further holding and a declaration that it is the obligation of the state under the act to extend the aid and assistance of its choice to one class of society through the resources of state and not at the cost of sufferings of other class of same society failing which any such measure of action would fail the test of law under Article 14 of the Constitution of India;

viii. for further holding and a declaration that the state cannot be allowed to force private unaided institutions to meet its obligations of imparting education without any definite arrangement for meeting the expenses incidental to running the institution and as such the impugned orders are highly unreasonable, arbitrary capricious and does not stand to the test of reasonableness.

ix. To any other relief(s) that the Petitioner is entitled to in the facts and circumstances of this case.”

On a pointed query as to why the petitioner firstly did not approach the authorities, pointing out grievances subject matter of the present petition, Shri Y.V. Giri, learned Senior Counsel appearing for the petitioner, states that despite earlier direction dated 4th of June, 2020 passed in CWJC No. 6151 of 2020 titled as St. Pauls International High School Vs. The Union of India & Ors., the authorities have not taken any decision.

Faced with such a situation, Shri Ojha, learned



counsel who appears on behalf of Respondent Nos. 2, 3, 5 to 10 states that Respondent No. 6, namely, The District Magistrate, Patna shall positively decide the issue within a period of four weeks from today.

Statement accepted and taken on record, clarifying that if the issue is not decided, this Court would not hesitate in initiating proceedings for contempt.

As such, the petition is disposed of on the following mutually agreeable terms:

- (a) All issues are left open;
- (b) Petitioner shall approach Respondent No. 6, namely, District Magistrate, Patna within next two working days pointing out all grievances emanating out of order dated 10th of April, 2020 (Annexure-6);
- (c) The said respondent shall positively decide the representation in accordance with law, within a period of four weeks from today;
- (d) Needless to add, opportunity of hearing shall be afforded to the representative of the petitioner-association;
- (e) Needless to add, the authority shall consider



all factors, including the fact that the petitioner is imparting education to the children through an electronic mode;

(f) Financial health and condition of the Institute/Institutions shall also be kept in mind; equally principles of equity;

(g) Liberty is reserved to the petitioner to take recourse to such other remedies as are otherwise available, including approaching this Court, on the same and subsequent cause of action, if so required and desired;

(h) If we find the respondent not to have taken any decision, we would not hesitate to initiate proceedings for contempt.

Writ petition stands disposed of in the aforesaid terms.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.09.2020
Transmission Date	

