

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7281 of 2015

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Sheo Shankar Prasad son of Late Ram Dahin Prasad Resident of village-
Pratappur, Police Statin-Kurtha, District-Arwal.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Development Department,
Government of Bihar, New Secretari
3. The Director, Primary Education, Human Resources Development
Department, Government of Bihar, New Se
4. The District Education Officer, Arwal
5. The District Programme Officer, Establishment, Arwal
6. The Block Education Extension Officer, Kurtha.
7. The Headmaster, Utkramit Middle School, Pratppur, Kurtha, District- Arwal

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar, Adv
For the Respondent/s : Mr. Pawan Kumar AC to AG.

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

Date : 18-08-2020

Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner has prayed for the following relief:-

(a) Issuance of an appropriate writ / writs /
direction / directions / order/orders for declaring ultra vires
the provisions contained in section 13(2)(ka) and Section
13(7) of Part-V of Bihar State Right of Children to Free and
Compulsory Education (Amendment) Rules 2013.

(b) Issuance of an appropriate writ / writs /
order / orders/ direction/directions to declare the
petitioner /Donor of the land for school as



President/Chairman of the Vidyalaya Shiksha Samitee of Pratappur Upgraded Middle School, Kurtha, Arwal.”

This writ petition has been filed by the petitioner to declare Rule 13(ka) and Rule 13(vii) of Part-V of Bihar State right of Children to Free and Compulsory Education (amendment) Rules 2013, as ultra vires as same are contrary to the provisions contained in Bihar Primary Schools Shiksha Samiti Act, 2011.

Petitioner claims to have donated 20 Decimals of land for construction of building of Pratappur Middle School, Kurtha, Arwal, on 05.08.2020 through a registered sale deed and building was constructed in his supervision when he was Secretary of the Shiksha Samiti. The donor member should be made President of Shiksha Samiti of Primary School.

It is submitted that according to new Rules the Ward member would be President of Shiksha Samiti which is against the provisions of Bihar Primary School Shiksha Samiti Act, 2011. According to Section 11 of Bihar Primary School Shiksha Samiti Act, 2011, the President and Secretary shall be elected by the elected members of the Shiksha Samiti and the members must be among the father/mother of the students studying in the concerned school. According to Section 13(ii) (ka) and Section



13(vii) the President of Shiksha Samiti would be Ward Member in whose jurisdiction the school is situated which is against the provisions of Bihar Primary Shiksha Samiti Act, 2011.

Counter affidavit has been filed on behalf of respondent in which it has been stated that provisions made in Rule-13(vii) of the Bihar State Right to Children to Free and Compulsory Education (Amendment) Rules, 2013, nominating Ward Member as Chairman of Vidyalaya Shiksha Samiti of the School where the concerned school is situated is not inconsistent with the parent act i.e. Right of Children to Free and Compulsory Education Act, 2009(Central Act) , since there is no specific procedure prescribed for constitution of the School Management Committee and it is left open for the State Government to make Rules. Section 21 and 38 of the Central Act, reads as follows:-

“21 School Management Committee. □

(1) A school, other than a school specified in sub-clause (iv) of Clause (n) of Section 2, shall constitute a **School Management Committee consisting of the elected representatives of the local authority**, parents or guardians of children admitted in such school and teachers: Provided that at least three-fourth of members of such Committee shall be parents or guardians: Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section: Provided also that fifty per cent. of Members of such Committee shall be women.

(2) The School Management Committee shall perform the following functions, namely:□

(a) monitor the working of the school;



- (b) prepare and recommend school development plan;
- (c) monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and
- (d) perform such other functions as may be prescribed.

38 Power of appropriate Government to make rules. □

(1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely: □

(a) The Manner Of Giving Special Training And The Time-Limit Thereof, Under First Proviso To Section 4;

(b) the area or limits for establishment of a neighbourhood school, under Section 6;

(c) the manner of maintenance of records of children up to the age of fourteen years, under Clause (d) of Section 9;

(d) the manner and extent of reimbursement of expenditure, under sub-section (2) of Section 12;

(e) any other document for determining the age of child under sub-section (1) of Section 14;

(f) the extended period for admission and the manner of completing study if admitted after the extended period, under Section 15;

(g) the authority, the form and manner of making application for certificate of recognition, under sub-section (1) of Section 18;

(h) the form, the period, the manner and the conditions for issuing Certificate of Recognition, under sub-section (2) of Section 18;

(i) the manner of giving opportunity of hearing under second proviso to sub-section (3) of Section 18;

(j) the other functions to be performed by School Management Committee under Clause (d) of sub-section (2) of Section 21;

(k) the manner of preparing School Development Plan under sub-section (1) of Section 22;

(l) the salary and allowances payable to, and the terms and conditions of service of, teacher, under sub-section (3) of Section 23;

(m) the duties to be performed by the teacher under Clause (f) of sub-section (1) of Section 24;

(n) the manner of redressing grievances of teachers under sub-section (3) of Section 24;

(o) the form and manner of awarding certificate for completion of elementary education under sub-section (2) of Section 30;

(p) the authority, the manner of its constitution and the terms and conditions therefor, under sub-section (3) of Section 31;

(q) the allowances and other terms and conditions of appointment of Members of the National Advisory Council



under sub-section (3) of Section 33;

(r) the allowances and other terms and conditions of appointment of Members of the State Advisory Council under sub-section (3) of Section 34.

(3) Every rule made under this Act and every notification issued under Sections 20 and 23 by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

(4) Every rule or notification made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislatures.

It has been further stated that Right of Children to Free and Compulsory Education (Amendment) rules-2013 framed by the State Government is in conformity with Section 21 of the Central Act and there is no bar that the Ward Member who is an elected local representative cannot be made President of the Shiksha Samiti. It has been further submitted that since there were inconsistencies between the provisions of Vidyalaya Shiksha Samiti Act, 2011(State Act), and Bihar State Right of Children to Free and Compulsory Education (Amendment) Rules 2013 framed by the State Government under the powers conferred under Section 21 & 38 of the Central Act, Vidyalaya Shiksha Samiti Act, 2011 has since been repealed.



There is no merit in this writ petition and the same is,
accordingly, dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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

