

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8058 of 2020

-
-
1. Mantu Kumar Sah Son of Shiv Narayan Gond (Roll No. 1059), Resident of Village- Narkatia, P.O.- Narkatia, P.S.- Uchkagaon, District- Gopalganj.
 2. Rajan Kumar Son of Heera Lal Sah (Roll No. 1133), Resident of Village- Narkatia, P.O.- Narkatia, P.S.- Uchkagaon, District- Gopalganj.

... .. Petitioners

Versus

1. The State of Bihar Through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director (Secondary Education), Government of Bihar, Patna.
4. The Bihar School Examination Board Patna through its Secretary.
5. The Secretary Bihar School Examination Board, Patna.
6. The Controller of Examinations (Secondary) Bihar School Examination Board, Patna.
7. Jai Ram Prasad Tiwari High School at Dahibhatta P.O.- Dahibhatta, District- Gopalganj, through its Headmaster.
8. The Headmaster Jai Ram Prasad Tiwari High School at Dahibhatta, P.O.- Dahibhatta, District- Gopalganj.

... .. Respondents

Appearance :

For the Petitioners :	Mr. Sanjay Kumar Pandey No.5, Advocate
For the Respondent State:	Mr. Madanjeet Kumar, GA-20
	Ms. Binita Singh, SC-28
For the Respondent BSEB :	Mr. Gyan Shankar, Advocate
For the Private School :	Mr. Krishna Ranjan

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 14-09-2021

This matter has been taken up for hearing *on-line* because of COVID-19 pandemic restrictions.

2. An issue, which otherwise appeared to be plain, simple and uncomplicated has unfolded the way in which the private institutions in the State of Bihar are running and imparting



education from Class 9 to 12 without any affiliation from any competent Examination Body.

3. The petitioners claimed before this Court that they had passed annual secondary examination held by the Bihar School Examination Board (hereinafter referred to as 'the Board') in the year 2009 as a regular student of J.P.T. High School, Dahibhatta, Gopalganj.

4. After having passed the matriculation examination, petitioner No.1 pursued his intermediate course and on successful completion of the said course, he took up B.A. course from a college under Jai Prakash University, Chapra in the year 2014. While pursuing his B.A. course, the petitioner No.1 required his original matriculation certificate for which he moved the Board through proper channel, whereupon he was informed that the original certificate had not been prepared because of some technical glitch. Subsequently, he came to be selected for appointment as Constable in Home-guard, for which he required original certificate of having passed matriculation examination.

5. Petitioner No.2, on the other hand, pursued a certificate course of Welder. After obtaining the certificate in 2013, he took up self-employment. He also required original



matriculation certificate for getting a passport. He approached the Board for issuance of original matriculation certificate.

6. Subsequently, the petitioners learnt that their results had been withheld for the reason that the examination fee for the matriculation examination held in the year 2009 was not paid. More than 11 years after publication of the result of matriculation examination of these petitioners, the Board issued a letter dated 15.04.2019 addressed to the Principal of J.P.T. High School, Dahibhatta, Gopalganj, mentioning therein that because of non-submission of examination fee of 103 students of the school at the rate of Rs. 1185 per student, the result and registration of all such examinees have been cancelled. The school was directed to inform the examinees in this regard.

7. Being aggrieved with the said communication, the petitioners approached this Court seeking quashing of the said letter dated 15.04.2019, which, according to them, was a result of certain dispute of accounting between the Board (respondents No. 4 to 6) and the School concerned (Respondents No. 7 and 8). The fact of cancellation of result of matriculation examination more than 10 years after its publication that too on the ground that examination fees were not deposited with the Board, shocked the Court's conscience.



8. At the first blush, when the matter was taken up on 176.03.2021, the Court presumed the school from where the petitioners had studied to be privately managed, in the background of the nature of controversy, i.e., non-submission of examination fee by way of misappropriation by the school management. It was in that background, following order was passed on 30.09.2020 : -

“It is the petitioners’ case that they passed matriculation examination in 2009 held by the Bihar School Examination Board. They are aggrieved by a recent decision of the Bihar School Examination Board, whereby, their results have been cancelled on the ground that at the time of submission of the examination forms, examination fees were not sent by the School, viz, Jai Ram Prasad Tiwari High School, Dahibhatta, Gopalganj, which is a privately managed school, where the petitioners had pursued their course.

Mr. Pandey, learned counsel appearing on behalf of the petitioners has submitted with reference to the statement made in the writ application that the petitioners had submitted the examination fees in the school and the cancellation of their results ten (10) years after publication on the ground that the School



could not furnish the examination fees to the Bihar School Examination Board is irrational and arbitrary. He has submitted that considering the serious immediate consequences, which the petitioners may have to face because of the impugned decision of the Bihar School Examination Board communicated to the School through letter dated 15.04.2019, they are ready to pay from their own pockets twice the amount which was required to be paid to the Board by the School as examination fees, though the petitioners had deposited the requisite amount with the School at the time of submission of examination forms.

Let the Bihar School Examination Board file an affidavit, dealing with the averments made in the writ application and its response to the submission made on behalf of the petitioners as noted above.

It has shocked the Court's conscience to notice certain facts from the communication dated 15.04.2019, which has been issued by the Bihar School Examination Board in relation to an examination, which was held in 2009, which is under challenge. The Court fails to comprehend the circumstance in which



the School did not deposit the examination fee and despite that the examination forms were accepted by the Board. This fact discloses serious irregularities in the education systems and the system of examination in the State of Bihar. It is, in Court's opinion, inoperative for the Bihar School Examination Board to find out such private schools in the State of Bihar run by trust or individuals whose misdeeds cause immense damage to the careers of young students, which have cascading effect.

It has, therefore, been considered appropriate to direct the Bihar School Examination Board to furnish list of all privately run Schools in the State of Bihar having affiliation with the Bihar School Examination Board up to 10 or 10+2 levels.

It has been informed that private Schools can be established or run only by a Society/trust duly registered, in accordance with law. The Court would expect the Board to deal with the aspect of the registration of the societies/trusts running private Schools. Since this is a general direction asking the Bihar School Examination Board to furnish details of



all the private Schools, in the first lot, the Bihar School Examination Board shall be required to furnish the list of the Schools in the farthest District of the State, viz, West Champaran.

List this case under appropriate heading on 14.10.2020.

Let the name of Mr. Gyan Shankar, learned counsel representing the Bihar School Examination Board be printed on the next date in the daily cause list.”

9. An affidavit was subsequently filed by the District Education Officer, West Champaran, on 01.03.2021 stating therein that there was no privately managed school in the district of West Champaran, which did not have the requisite affiliation/recognition from an competent affiliating examination body. However, an interlocutory application was filed subsequently seeking withdrawal of the counter affidavit filed on 01.03.2021. Considering the averments made in I.A. No. 1 of 2021, the counter affidavit filed on 01.03.2021 has been permitted to be withdrawn. I.A. No. 1 of 2021 stood allowed. Subsequently, the District Education Officer filed an affidavit mentioning therein that there were 211 schools in the district of West Champaran imparting education from Class 1 to 8 without any statutory



recognition/affiliation/permission of the establishment. Further, there were 13 schools found imparting education from Class 9 to 12 as informed by the District Programme Officer (Secondary Education), West Champaran, which are running without statutory recognition/affiliation/permission of the establishment. The fact that the District Education Officer himself admitted that there were 13 schools running in one district in the State of Bihar without affiliating or recognition was considered to be a disturbing phenomenon, which was recorded in the order dated 16.03.2021. In such circumstances, the Court required the Principal Secretary, Education Department, Government of Bihar, to file an affidavit as to what action the State Government proposes to take against such schools, which are running without statutory affiliation in the State of Bihar, which has serious adverse consequences on the career of the students studying in unrecognized/unaffiliated schools. The District Education Officer was, therefore, also required to file a supplementary counter affidavit informing this Court as to what action had been taken in respect of the private schools which had allowed admission from Class 9 to 12 without statutory affiliation.

10. Be it noted, at this juncture, that on 20th May, 2021, the Court was informed that the Board had taken a decision to recall the order cancelling matriculation examination result of the



petitioners and other similarly situated persons whose results were cancelled because of non-submission of the examination fee in the year 2009 subject to the condition that demand draft of Rs.2370/- was submitted to the Board in respect of each of such candidates through their respective schools.

11. From a subsequent order of this Court dated 28.06.2021 passed in this case, it will transpire that the result of the examination of the petitioners has been republished. Consequently, the grievance of these petitioners stood redressed with the recall of the order of cancellation of their results and republication of their result by the Board after submission of draft of the amount as indicated by the Board. It has been recorded in the order dated 24.08.2021 that learned counsel for the petitioners has agreed that the grievance of the petitioners stood fully redressed.

12. However, in view of the disturbing facts, which have emerged from the facts disclosed in the counter affidavits and supplementary counter affidavits filed on behalf of the State of Bihar, it has been considered appropriate in the interest of justice to issue certain directions so as to ensure that due control is exercised and running of privately managed schools in the State of Bihar is regulated, strictly adhering to the statutory requirements,



which, in the Court's opinion, can be achieved only by prompt supervision by officials posted in the field under the strict supervision of senior officials of the Education Department, Government of Bihar.

13. In a show cause reply filed by the District Education Officer, West Champaran, it has been stated that there are 211 schools imparting education up to class 8, which have no recognition/affiliation/permission and there are 13 schools, which are running courses from Class 9 to 12 without any recognition. Following is the list of such thirteen schools in the district of West Champaran : -

क्रम संख्या	प्रखंड का नाम	विद्यालय का नाम	अभ्युक्ति
01	बगहा-1	एम०ए०वाई सेंटरल स्कूल बगहा-1	वर्ग 9 से 12 तक
02	बगहा-1	आर०सी०इंटरनेशनल स्कूल चौतरवा	वर्ग 9 से 12 तक
03	बगहा-1	डी०पी०एस० भैरोगंज	वर्ग 9 से 12 तक
04	गौनाहॉ	कस्तुरबा कन्या 30 मा० वि० गाँधी आश्रम मितिहरवा श्रीरामपुर	वर्ग 9 से 12 तक
05	मधुबनी	हरिहर दास मा० विद्या मंदिर बाँसी धाम	वर्ग 9 से 10 तक
06	मधुबनी	बद्री नारायण पब्लिक स्कूल भेडिहारी टोला बरवा	वर्ग 9 से 10 तक
07	मधुबनी	एच०सी० नेशनल स्कूल सेमरिया रोड मरिचहवा	वर्ग 9 से 10 तक
08	मधुबनी	एस० बी० पब्लिक स्कूल धनहॉ	वर्ग 9 से 10 तक
09	मधुबनी	स्वामी दयानंद सरस्वती पब्लिक स्कूल मरिचहवा	वर्ग 9 से 10 तक
10	मधुबनी	आर्दश पब्लिक स्कूल डीही भपसा पुल धनहॉ मधुबनी	वर्ग 9 से 10 तक
11	मधुबनी	एस० एस० डी० पब्लिक स्कूल मरिचहवाँ	वर्ग 9 से 10 तक



12	मधुबनी	श्रीमति फुलपति देवी पब्लिक स्कूल दोनाहॉ	वर्ग 9 से 10 तक
13	मधुबनी	सी० जे० मार्डन जूनियर पब्लिक हाई स्कूल घेवडही	वर्ग 9 से 10 तक

14. This Court by order dated 16.03.2021 had required the District Education Officer to file a supplementary counter affidavit informing this Court as to what action had been taken in respect of the private schools which allowed admission from Class 9 to 12 without statutory affiliation. In pursuance of the said order, the District Education Officer has filed an affidavit making following statements in paragraphs 6 and 7 : -

“6. That it is humbly submitted that the three men enquiry committee submitted its report vide memo no. 1204 dated 05.04.2021 and memo no.1243 dated 10.04.2021 wherein it has been submitted that the 13 private schools in question were not having recognition/affiliation from the competent authority Bihar School Examination Board, Patna. It has been stated by the 13 private schools administration that only classes of 1 to 8 are running and tuition of class 9 and 10 are being conducted.

7. That it is stated that the District Education Officer, West Champaran, Bettiah vide letter no.275 dated



12.04.2021 (addressed to all 13 private schools in question) banned all the 13 private schools from taking admission or running class 9 to 12 with immediate effect. It has also been directed that since these school have not made available any required licence for running tuition for class 9 and 10, so they were also banned from conducting any tuition.

15. The aforesaid averments made by the District Education Officer in his supplementary counter affidavit discloses complete absence of control of the officials. As reported by the District Programme Officer (Secondary Education), West Champaran, himself, there were 13 schools, which were found to be imparting education from Class 9 to 12. Now, statement is being made that the administration of all the 13 private schools have claimed that classes of 1 to 8 only are running and for 9 and 10 tuition classes are given by those 13 institutions.

16. The District Education Officer has now banned all 13 private schools from giving admission or running classes of 9 to 12 with immediate effect. It is the own case of the District Education Officer, West Champaran, that in any case these schools do not have the requisite licence for running tuition for Class 9 and



10 and, therefore, they have been banned from conducting any tuition class.

17. The Additional Chief Secretary, Education Department, Government of Bihar, has also filed an affidavit in compliance of an order of this Court. Paragraphs 6 and 7 of which read as under : -

“6. That it transpires that this Hon’ble Court while hearing the case on 16.03.2021 has been pleased to direct “Let the Principal Secretary, Education Department, Government of Bihar, file an affidavit as to what action the State Government proposes to take against such schools running without statutory affiliation in the State of Bihar, which has serious adverse consequences on the career of the students studying in unrecognized/unaffiliated schools. The Court will consider passing appropriate orders after filing of the affidavit by the Principal Secretary, Education Department, Government of Bihar”.

7. That in compliance of the direction made by this Hon’ble Court the instant Counter Affidavit is being filed by the answering respondent setting out hereinbelow the relevant provisions for



proper appreciation and adjudication of the matter in its correct perspective: -

i. The establishment of schools for imparting education from standard 1 to 8 are being made under the provisions of Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as RTE Act, 2009) and concerned Rules, 2011.

ii. That in order to check and curb to run the Elementary Schools without having recognition from the appropriate authority, the Education Department, Govt. of Bihar has issued a Notification dated 19.06.2013 contained in Memo No. 771 by which it has been provided that in case of establishing or running any elementary School (std I to VIII) without obtaining certificate of recognition, or continues to run a School after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues in consonance of the provisions enshrined under Section 18 (5) and 19 (5) of the RTE Act, 2009. The State Govt. has declared the Director, Primary Education, competent authority



to impose punishment for violation of the provisions of said Section 18 (5) and 19 (5) of the RTE Act, 2009.

iii. That it transpires that in view of the order dated 02.03.2021 passed by this Hon'ble Court the Director, Primary Education, Govt. of Bihar vide his letter No. 310 dated 08.04.2021 has directed all the District Education Officers to submit the detailed year-wise description in respect of the action taken in compliance of the guidelines vide Notification No. 771 dated 19.06.2013 issued by the Education Department, Govt. of Bihar (Annexure-A of this Counter Affidavit) and further a reminder has also been made vide letter No. 345 dated 15.04.2021 addressed to all the District Education Officers to do the needful.

iv. That for the purpose of Secondary/Senior Secondary level (Class IX to XII) annual Examination and its certification the school concerned required to obtain affiliation from different Examination Boards like Bihar School Examination Board (In Short B.S.E.B.), Central Board of Secondary Education (In short C.B.S.E.) or the Indian Certificate of Secondary Education (In Short I.C.S.E.).



Secondary/Senior Secondary level schools which fulfill the prescribed norms of concerned Boards, are granted affiliation by the concerned Board. For example Bihar School Examination Board under the provisions of Bihar School Examination Board Affiliation Bye-laws, 2011 (as Amended in 2013) likewise the CBSE/ICSE Board grants affiliation on the basis of self declared certificate by the concerned schools after obtaining No Objection Certificate from the State Govt. In case of any deficiency the CBSE/ICSE has discretion to take action in accordance with law. Under this, withdrawal of affiliation is one of the action which can be taken by the concerned board.

v. That schools imparting Education of Secondary/Senior Secondary level in the State are mandatorily required to have affiliation from B.S.E.B./C.B.S.E./I.S.C.E. to get its students appeared in the annual Matriculation/Intermediate level examination and its certification.

vi. The concerned schools are expected to disclose the name of the board on their official website or in their prospectus by which they were/are



affiliated, so that the students or their parents can pursue the same and accordingly decide to take admission.

vii. That it not out of place to mention at this stage that the Director, Secondary Education vide his letter No. 332 dated 19.04.2021 has directed all the District Education Officer to identify such Secondary level Schools running under their jurisdiction without having affiliation from Bihar School Examination Board, Bihar Sanskrit Siksha Board, Bihar State Madarsa Education Board, Central Board of Secondary Education and Indian Certificate of Secondary Education and after issuing Show Cause notice to its Managing Committee and after being satisfied that the said School is running without obtaining affiliation from the competent Board, steps should be taken to close such Schools, the District Education Officer, if necessary, may take assistance of Superintendent of Police concerned to do the needful.”

18. It has also been stated that the State of Bihar has resolved to provide facility of +2 level education at each and every Panchayat level by resolution dated 05.07.2013.



19. From the counter affidavit filed on behalf of Director, Secondary Education, Government of Bihar, it has emerged that on the basis of reports received from all the districts in the State of Bihar, five schools in the district of Bhojpur, two schools in the district of Rohtas, two schools in the district of Jehanabad, 11 schools in the district of East Champaran and four schools in the district of Samastipur have been found to be running courses up to 10/10+2 level without any affiliation. It has been stated that the District Education Officers, Bhojpur, Rohtas, Jehanabad, East Champaran and Samastipur, have been directed to take immediate steps to get all such schools closed, which are running without affiliation from any competent examination board and send compliance report by 04.08.2021. It has further been stated that in response to the said communication, the District Education Officers of the district of Bhojpur, Rohtas, Jehanabad, East Champaran and Samastipur have reported that the schools falling in their jurisdiction with no affiliation from any competent board have been closed. The District Education Officer, Rohtas is said to have informed that two schools, which were earlier identified as non-affiliated, have produced certificate to the effect that those schools have already obtained affiliation from Central Board of Secondary Education.



20. Allowing unscrupulous dishonest private managements to run courses in private institutions without affiliation hits at the root of school education system. Apparently, these institutions through illegal means for dishonest gains succeed in managing their students, somehow or the other, to appear at an examination held by a recognized examining body. Dishonesty begins in such cases from the beginning of the career of the youths, who are otherwise innocent. The State Government, which discharges its function for public good cannot afford to underestimate the adverse consequences of permitting fraud of such nature by allowing unaffiliated/unrecognized institutions, which escape regulation, to be run. The Court is of the opinion that the State Government must consider taking such steps as would be deterrent for private organizations to run educational institutions without requisite affiliation/recognition/licence for self gain.

21. It is evident from the affidavit filed by the Additional Chief Secretary, Education Department, pursuant to certain orders passed by this Court, various steps have been taken and the District Education Officers of the concerned districts have been directed to ensure strict compliance of the statutory provisions for running schools imparting education upto 10th and 12th standard.



22. Considering the facts and circumstances, it has been considered appropriate to issue certain directions for the respondent State of Bihar to follow for strict implementation of the provisions under the Bihar School Examination Board Act, 1952 and Rules and Regulations framed thereunder.

- (1) It shall be the responsibility of the District Education Officer of the concerned districts to find out and prepare list of all privately managed schools imparting regular education, more particularly up to Class 10th and 12th.
- (2) The District Education Officer shall be thereafter required to seek information from the concerned schools whether they are affiliated to any of recognized examination Boards/Councils or not.
- (3) In respect of such schools, which claim to be affiliated/recognized by the Bihar School Examination Board, it shall be ensured that such schools possess requisite qualified teaching and non-teaching staff and infrastructure in terms of land, building etc. strictly in accordance with the statutory provisions/guidelines issued from time to time.



(4) In respect of the institutions recognized by the Bihar School Examination Board, the Secretary, Bihar School Examination Board, is directed to develop a mechanism for regular inspection of such schools to ascertain whether the schools do maintain the standard of education and facilities, which qualify them to be affiliated to the Board.

(5) It will be obligatory for the Board to take all effective steps including cancellation of affiliation in accordance with the statutory provisions, if such schools do not satisfy the requirement for affiliation.

23. List this matter on 11.01.2022 under the heading ‘To Be Mentioned’ for the Board and the State of Bihar to report compliance on the present order.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.10.2021
Transmission Date	N/A

