

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1520 of 2019

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Jose Daniel @ Jose Dainel, Son of K.J. Dainel, Resident of Mount Zion School, Convent Road, Purnea, Police Station Kuhi Colony, Distt. Purnea

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Bihar, Patna.
2. The Principal Secretary, Department of Education, Bihar, Patna Bihar
3. The Director, Primary Education, New Secretariat, Bihar, Patna
4. The District Magistrate, Purnea
5. The District Education Officer, Purnea
6. District Programme Officer, Elementary Education and Mass Education Drive, Purnea Purnea
7. Amitesh Kumar Singh s/o Sri Hira Prasad resident of Mohalla Shiksha Nagar, ward No. 10, Banmankhi, P.O. and P.S. Banmankhi, District Purnia.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate
		Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Subhash Chandra Mishra, SC-16
For the Intervenor	:	Mr. Sushanta Kumar Das, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

9 18-08-2023 Heard Mr. Chitranjan Sinha, learned senior counsel assisted by Mr. Sanjay Kumar, learned counsel for the petitioner, Mr. Subhash Chandra Mishra, learned SC-16 for the State and Mr. Sushanta Kumar Das, learned counsel for the intervenor-respondent no.7.

2. This writ application has been filed seeking quashing of the order as contained in memo no.1611 dated 10.11.2018 issued under the signature of the District Programme Officer, Elementary Education and Mass Education Abhiyan, Purnea



whereby and whereunder recognition granted to Mt. Jion School, Convent Road, Purnea has been cancelled/withdrawn in terms of the provisions of Right of Children Free and Compulsory Education Act, 2009.

3. Learned senior counsel for the petitioner has assailed the impugned order at this stage on the grounds inter-alia that the impugned order has not been passed in accordance with Rule 11 of the Bihar State Children's Free and Compulsory Education Rules, 2011 (hereinafter referred to as the 'Rules of 2011'). Learned senior counsel submits that according to Rule 11 any decision regarding withdrawal of recognition of a school is to be taken by a three members committee. Who will be the members of the committee is also stated under sub-rule(1) of Rule 11 of the Rules of 2011. According to this Rule, the District Education Officer would be the convener of the committee whereas the District Superintendent of Education would be the member secretary and one member shall be nominated from amongst the officers at the level of Deputy Collector by the District Magistrate.

4. Learned senior counsel has pointed out that in this case the District Superintendent of Education was not there in the three members committee, instead the District Programme Officer assumed the role of the member secretary.

5. Learned senior counsel further points out with



reference to Rule 12 of the Rules of 2011 that according to this Rule if it is found that a school has violated one or more than one of the parameters as per schedule of the Act, the committee has to proceed in accordance with the provisions contained under Rule 12 of the Rules of 2011. The committee shall firstly issue a notice pointing out the conditions which have been violated by the school and one month time shall be granted to submit explanation. On finding the explanation dis-satisfactory, the committee shall conduct an inspection of the school and after the inspection a decision will be taken as to whether the recognition of the school be allowed to continue or it should be withdrawn.

6. It is stated that clause (c) of sub-rule(1) of Rule 12 of the Rules of 2011 further prescribes that any action towards withdrawal of the recognition shall not be taken until an opportunity of hearing is provided to the school. It further states that before passing any order for withdrawal of recognition, approval of the Human Resources Development Department shall be mandatory. It is only after the approval of the said department the member secretary shall issue an order of withdrawal of recognition.

7. Learned senior counsel submits that in this case despite opportunity granted by this Court to the respondents to file supplementary counter affidavit no explanation has been offered as



to how the District Programme Officer could be introduced as a member of the committee and then there is nothing to say that the approval of the concerned department was obtained prior to issuance of the impugned order. All that it is stated that it has been done by the Director of the Department.

8. Learned counsel for the State and learned counsel for the respondent no.7 have opposed this writ application. Mr. Subhash Chandra Mishra, learned counsel for the State has drawn the attention of this Court towards the statements made in the supplementary counter affidavit wherein it is stated that the withdrawal of the recognition has been given in accordance with the provisions of Rules of 2011. According to Mr. Mishra, a five men committee was constituted earlier for purpose of inspection of the school. The said committee inspected the concerned school on 05.05.2018 and submitted an inspection report which was sent by the respondent no.6 vide letter dated 14.05.2018 to the District Education Officer, Purnea, then the District Education Officer, Purnea vide letter dated 30.05.2018 asked the Principal of the concerned school to submit explanation within a month. The school submitted its explanation dated 27.06.2018 through one Manoj Kumar, thereafter the District Education Officer, Purnea vide letter dated 30.06.2018 sent all relevant documents to the Director, Primary Education for appropriate action under the Right



to Education Act and after considering the relevant documents, the necessary approval was granted vide letter dated 29.10.2018 for withdrawal of recognition granted to the school.

9. In course of argument, learned counsel for the State accepts that at least on the record there is no material to show that the Human Resources Development Department had granted approval in terms of Rule 12 of the Rules of 2011.

10. As regards the induction of the District Programme Officer in the three members committee, learned counsel submits that because the post of District Superintendent of Education no longer exists, the District Programme Officer was appointed as a member secretary of the committee.

11. Learned counsel for the intervenor-respondent no.7 has also endorsed the submissions of learned counsel for the State.

12. Having heard learned senior counsel for the petitioner, the State and the intervenor-resondent no.7 and upon going through the records, this Court is of the considered opinion that the respondents have not followed the procedures prescribed under Rule 11 and 12 of the Rules of 2011 and for this reason alone, at this stage the impugned order is liable to be set aside. At first instance, this Court finds that sub-rule (1) of Rule 11 of the Rules of 2011 clearly states that there will be a three members committee and who will be members of the committee is also



clearly provided. There is no provision for nomination of any other person by way of substitution and no such power has been delegated to the District Magistrate, therefore, this Court is of the view that the District Programme Officer could not have been inducted as member of the committee and the District Magistrate had no authority of law to declare him member secretary.

13. This Court further finds that under Rule 12 of the Rules of 2011 first of all a notice has to be issued to the school clearly stating the conditions which have been allegedly violated and after considering the explanation of the school if it is found that the same is not satisfactory then the school is to be inspected and a decision is to be taken after the said inspection.

14. In the present case, it appears from the statements made in paragraph '9' of the supplementary counter affidavit that a five men committee inspected the school, prior to the said inspection no opportunity was given to the school to submit its explanation, thus, the mandate of the Rule that only after the explanation is found dis-satisfactory an inspection is to be carried out has not been followed.

15. Further this Court finds that the respondents have not brought on record any material to show that prior to issuance of the impugned order by respondent no.6 any approval was obtained from the Human Resources Development Department.



All that stated in paragraph '9' of the supplementary counter affidavit is that all relevant documents were sent to the Director, Primary Education for appropriate action and after considering the relevant documents, the necessary approval was granted for withdrawal of recognition. In absence of a specific averment in consonance with the mandate of the Rule, this Court observes that the impugned order has been passed again in violation of the provisions of the Rule 12 of the Rules of 2011.

16. For the aforesaid reasons, the impugned order as contained in memo no.1611 dated 10.11.2018 (Annexure- '5') is hereby set aside. The matter is remitted to the committee under Rule 11 of the Rules of 2011 to take an appropriate decision in accordance with law within a period of three months from the date of receipt/communication of a copy of this order.

17. This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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