

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4281 of 2019

1. Budhdev Mahto and Ors Son of Bharat Mahto Resident of Village and P. O. - Bardela, P.S. - Dhamdaha, District - Purnea.
2. Bhairo Yadav Son of Bharat Mahto Resident of Village- Pairgaha, P.O - Sugwauran, District - Jamui.
3. Upendra Yadav son of Baladev Yadav resident of Village- Pairagaha, P. O- Sugwauran, District - Jamui.
4. Shakuna Devi wife of Bharat Yadav Resident of Village- Pairgaha, P.O- Sahiya, P.S.-Jhajha, District-Jamui.
5. Manoj Kumar son of Parshuram Mehta resident of Village-Ora, P.O - Kanbehari, P.S. District - Aurangabad.
6. Birendra Yadav Son of Bigan Yadav Resident of Village - Sinduari, P. S. - Goah District - Aurangabad
7. Rampravesh Chouhan Son of Budhan Chauhan Resident of village - Jodhan Bigha, P.O. - Diha, P. S. Ariari, District - Sheikhpura.
8. Shamim Ahamad Son of Late Raisum Azam resident of Ward No. 5, Deruwa, Sitapur, District - West Champaran.
9. Md. Monir Alam son of Shamsul Haque resident of Ward No.5, Deruwa, Sitapur, District - West Champaran
10. Nasim Ahmad son of Rasul Azam resident of Ward No.5, Deruwa, Sitapur, District - West Champaran.
11. Aslam son of Tahir Resident of Ward No.5, Deruwa, Sitapur, District - West Champaran.
12. Yasin Miyan son of Late Nazeer Miyan Resident of Ward No.7, Telpur, District-West Champaran
13. Zakir Hussain son of Md. Zalim Ansari Resident of House No. 50, Near Chhotte Masjid, Telpur, District-West Champaran.
14. Munni Khatoon Wife of Mehendi Hasan Resident of Ward - No.7, Telpur, District- West Champaran.
15. Gausul Azam son of Shekh Md. Hasan Resident of Ward - No.7, Telpur, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar and Ors BIHAR
2. The Principal Secretary Education Department, Government of Bihar, Patna.
3. The Director Secondary Education, Government of Bihar, Patna
4. The Bihar School Examination Board through its Secretary Sinha Library Road, Patna
5. The Chairman Bihar School Examination Board, Sinha Library Road, Patna.
6. The Secretary Bihar School Examination Board, Sinha Library Road, Patna



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate
For the State : Mr. P.K. Shahi, AG
Mr. Apurva Kumar, Advocate
Mr. Shilpa Singh, GA-12
For the Board : Mr. Gyan Shankar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-08-2023

The petitioner, in public interest, by the above writ petition sought to highlight the lack of infrastructure in the schools within State of Bihar affiliated to the Bihar School Examination Board, under the Bye-Laws. This Court found on the basis of the material relied on by the petitioners and also looking at an affidavit filed by the Secretary-in-charge of the Education Department, that the plea raised of absence of requisite infrastructure is correct and that in more than six thousand Government schools there is absence of playground and shortage of teachers. This Court by order dated 30.08.2022, directed the District Education Officers all over the State to furnish information in a tabular form clearly indicating the infrastructure available and that mandatorily required.

2. Again on 19.09.2022, noticing that the earlier order has not been complied with, the Principal Secretary,



Education Department was called upon to ensure compliance, failing which he was directed to be present in person. Upon which the District Education Officers filed their respective affidavits. Verifying the said affidavits and also with reference to the affidavit filed by the District Education Officer, Patna, the Additional Chief Secretary, Education Department was directed to take adequate remedial measures and file a personal affidavit explaining the factual matters within a period of two weeks; on 10.10.2022. Then the matter got adjourned indefinitely.

3. The Additional Chief Secretary, Education Department has filed an affidavit dated 01.11.2022, in which it is stated that there were insufficient schools established by the Government within the State of Bihar, by reason of which a policy decision was taken to take-over the secondary schools which fulfill the requisite criteria, managed by private individuals/managing committees, for which the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981 was promulgated. In an attempt to strengthen the taken over schools, the Human Resources Development Department decided to provide necessary funds as per the recommendation of the 12th Finance Commission for the



renovation of school buildings, construction of toilets, providing preference to the wards belonging to Scheduled Castes, Scheduled Tribes/Weaker Sections.

4. As to the exemption from the mandatory requirements as per the Affiliation Bye-laws, it is stated that the Bihar School Examination Board Act, 2007, was enacted with the intention of providing affiliation to Secondary and Senior Secondary Schools established by non-governmental organisations and as per Section 10(c) of the Act of 2007, only Senior Secondary Schools established or to be established by non-governmental organisations are required to seek affiliation from the Board; thus exempting the other Government schools from the terms and conditions laid down under Clause-3 of the Affiliation Bye-laws, 2011. The various steps taken to establish and carryout construction of school buildings under the various schemes were also detailed in the said affidavit.

5. Considering the up-gradation of schools, the Education Department took a decision on 05.10.2013, to expand the coverage of +2 level education and accordingly 6421 *Panchayats* of the State have been provided with +2 level Senior Secondary Schools so as to cater to the rural and farflung areas. The State Government is also committed to providing



infrastructure in a phased manner and the Bihar State Infrastructural Department Corporation has sanctioned buildings for 2899 schools with 1940 having completed and 394 buildings, construction of which are in various stages. It is also stated that there is no proposal for 565 buildings owing to the non-availability of land, disputes regarding title etc.

6. It is also stated that expeditious steps are being taken to fill up the vacant posts of teachers through recruitment, with the 5th phase of recruitment completed and the 6th phase on the verge of completion. Many more affidavits were filed, the last of which was on 29.03.2023, by the Additional Chief Secretary, Education Department, Government of Bihar.

7. It is submitted that quite conscious of the moral and social responsibility, the Education Department, Govt. of Bihar is taking steps to establish/upgrade Senior Secondary schools in every Panchayat so that the future/career of the young generation is not jeopardized. The department endeavors to provide affordable education across the State with infrastructure facilities made available. With five directorates and several apex bodies, the department is striving to facilitate holistic environment for youth, women and others to explore their knowledge and skills by pursuing primary, secondary, higher



and mass education.

8. Unlike the autonomous funding from private players, the government schools are wholly or partly funded by revenue generated by the State. The curriculum is designed at the state and national level and all government schools follow the same curriculum. Admissions are carried out based on the geographical location of the student and not by a child's social group or economic background. In the Government schools, fees are made affordable or free for those who can't afford. The free mid-day meals and uniform to children is a source of motivation for the underprivileged to build their dreams on equal grounds with those who are privileged. Elementary Education (Class 01 to 08) has been universalized and the students are being imparted free education.

9. It is emphasized that though the comparison between government and private schools is never ending, every school has its special significance which caters to the needs of the children. Both types of schools nurture the individual which contributes to the overall development of the nation. The Department of Education, Bihar, according to the affidavit has been striving hard to achieve the goal of 'Education at Your Doorsteps' and realizing such a dream. The other objectives



include providing access to upper primary education for disadvantaged girls in the age group of 10-14 years, since they generally remain outside the educational system due to persistent socio-economic and cultural reasons. Kasturba Gandhi Balika Vidyalaya (KGBV) program has been launched to enroll more girl children to the schools.

10. Decision was taken to establish and upgrade senior secondary Schools in every Panchyats vide Resolution No. 1021 dated 05.10.2013 subject to availability/ procurement of lands. Accordingly, 6421 Panchayats of the State have been provided +2 level schools to cover rural and far flung areas so that no children be deprived of education. Considering the non-availability of sufficient land for upgradation of Senior Secondary Schools in each Panchayat an amendment was made in Resolution No. 1021 by which it was decided that such School should possess minimum 0.75 decimals of land as is evident from resolution No. 141 dated 05.02.2018. That in spite of Resolution No. 141 dated 05.02.2018 sufficient land is not available in every panchayat and hence it was decided to take steps to procure land on donation and in lieu thereof the school was to be named in the name of land owner. Decision has also been taken to acquire land through perpetual lease as is



evidenced by letter No. 657 dated 20.03.2018.

11. As far as non-availability of play grounds in schools, there is a high density of population per sq. km in the State which is the second highest in the country (1106 as per 2011 census) and in such a situation it is extremely difficult to make available land for play ground in each and every school.

12. Having considered the counter-affidavits filed and the statements made therein we are satisfied that the Government is taking positive steps to realize the goal of spread of education in the entire State and the writ petition can be disposed off with the fervent hope that the efforts would continue unabated. We find no reason to keep the matter pending any further and recording the statements made above, dispose off the writ petition.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	NAFR
CAV DATE	
Uploading Date	08.09.2023
Transmission Date	

