

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4512 of 2020

Prarambhik Shiksha Prasar Prachar Shikshak Mahasangh Patna, Bihar through its Chairman Sri Ajay Kumar Singh, Son of late Sheonath Singh, Resident of Village- Road No. 01, Magadh Colony, Chandauti More, P.S. Magadh Medical , District- Gaya.

... .. Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary Department of Education-Cum- Addl. Chief Secretary, Government of Bihar, Patna.
3. The Secretary, Education Department, Bihar, Patna.
4. Director, Primary Education, Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Ms. Shatabai Sinha, Advocate Mr. Harsh Vardhan, Advocate
For the Respondent/s	:	Ms. Smt. Binita Singh (SC28)

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 19-09-2023 Heard learned counsel for the petitioner and the State.

2. Petitioner is aggrieved by and dissatisfied with the order contained in Memo No. 740 dated 09.07.2019 issued under the signature of Additional Chief Secretary, Department of Education Government of Bihar in compliance with the order of the Hon'ble Supreme Court in writ petition (c) No. 237 of 2015 (Prarambhik Shiksha Prasar-Prachar Shikshak Mahasangh Patna, Bihar through its Secretary and others Vs. State of Bihar and Others).

3. Learned counsel for the petitioner submits that the impugned order as contained in Annexure '7' to the writ



application contains reasons for rejection of the claim of the petitioner- Sangh with respect to the schools mentioned in Annexure '1' to the writ application on the grounds stated in paragraph '5' of the impugned order.

4. It is submitted that on a perusal of paragraph '5' of the impugned order it would appear that the petitioner- Sangh has produced a number of evidences to claim that the schools in question were taken over and those were the schools in the list of 54,000 schools which were taken over by the government under the notification no. 763 dated 09.02.1973. In his order the Additional Chief Secretary has rejected all those evidences in one line saying that from the evidences produced by the Sangh itself, it appears that the schools were not taken over. Nothing has been mentioned either to take note of the evidences produced by the petitioner or by way of reason to reject his evidences.

5. It is further submitted that in the impugned order an impression has been given that the schools in question are not in the list of 54,000 schools and these schools are in the category of 982 schools who were not taken over but when this Court called upon by a judicial order dated 04.01.2023 to the State to file an affidavit whether the name of the petitioner is mentioned in the list of 54,000 institutions or not, the State has come out with an affidavit which has now been disclosed for the first time in



paragraph '6' that all endeavors were made to locate the said estimated list of 54,000 schools which probably had been of the year 1973 but the same is not traceable. If the list of 982 schools which finds mention in the impugned order has not been placed before this Court. It is submitted that in the impugned order, however, there is no mention of the fact that the Additional Chief Secretary was not having the list of the 54,000 schools, the rejection has been done in a routine and mechanical manner and in absence of the records to verify the evidences which were produced by the petitioner.

6. Learned counsel for the petitioner has taken this Court through the averments made in the writ application. It is the contention of the petitioner that there is nothing on the record to show that earlier the inspection and recommendation of the schools in question were not done by the Inspection Committee. It is the case of the petitioner that in the records which were placed before the Additional Chief Secretary in course of consideration of the representation of the petitioner it was noticed that there was a recording in the file that the Primary Schools have been granted proper sanctioned by the competent authority according to Section '3' of the Primary Middle School Rules 1961 and it has also been disclosed that the Primary Schools have been running since prior to 01.01.1971. The submission is that the impugned order does not



provide reasons available in the record. If the records of the list of 54,000 schools were missing, the authorities should have taken some more time either in finding its records or in reconstruction of the records but by no means the representation of the petitioner could have been rejected in a mechanical manner.

7. The writ application has been opposed by Ms. Binita Singh learned Standing Counsel 28 for the State.

8. Learned counsel admits that the list of the 54,000 schools which probably had been of the year 1973 could not be traced, however, learned counsel submits that efforts are on to trace the records.

9. Learned counsel has further submitted that from the impugned order itself it would appear that in the meeting held on 13.06.1993 the Cabinet has taken a decision to cancel the take over of 982 so called primary schools and it has been decided that all such schools which are purely primary private schools, there would be no justification of making payment to the teaching and non teaching staff of such schools. Referring to Annexure 'H' to the counter affidavit which is an order passed by this Court in CWJC No. 10261 of 2017 and other analogous matters, learned counsel submits that the writ Court has earlier refused to interfere with the policy decision of the government which was taken in the year 1993.



10. Having heard learned counsel for the petitioner and the State as also on perusal of the records what transpired to this Court is that in the present writ application the petitioner is not challenging the policy decision of the Cabinet taken in the year 1993. The challenge is to the order impugned in the writ application whereby the representation of the petitioner has been rejected saying that from the evidences produced by the petitioner itself it appears that the schools were not taken over. Nothing has been disclosed by the State respondents to show as to what were those evidences which did not inspire confidence of the respondent authorities. Further the impugned order says that the schools are not there in the list of 54,000 schools but the facts which are emerging now are clearly showing that the Additional Chief Secretary was not in possession of the list of 54,000 schools because the said file is missing. If this was the position, in all fairness, the correct facts should have been recorded in the impugned order with regard to missing of the records and the action which if any, have been taken by the authorities to reconstruct the records. Nothing has been said in this regard in the impugned order.

11. In the given circumstances, to this Court it appears that the reasons provided in paragraph '5' of the impugned order are not substantiated from the records. Thus, those are not



sustainable and would not come within the preview of a reasoned order.

12. In result, the impugned order as contained in Memo No. 740 date 09.07.2019 (Annexure '7' to the writ application) is hereby set aside.

13. This Court directs the Additional Chief Secretary/ Competent Authority, as the case may be, to take appropriate steps either to trace the records or reconstruct the records and then consider the case of the petitioner giving a fresh hearing and pass an appropriate reasoned order within a reasonable period, preferably within a period of six months from the date of receipt/production of a copy of this order.

14. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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