

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6918 of 2024

Plus 2 Arya Kanya Uchaya Vidyalaya, Khagaria governed by a Managing Committee through its Secretary Rajkumar Fogla, Male, aged about 49 years, S/o Late Satyanarayan Fogla, R/o 51, Main road, Khagaria, Near Arya Samaj Mandir, Khagaria Mukhya Dakghar, P.S. Khagaria, District - Khagaria, Bihar 851204.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Secondary Education, Govt. of Bihar, New Secretariat, Bailey Road, Patna.
2. The District Magistrate-cum-Collector, Khagaria.
3. The Additional District Magistrate, Khagaria.
4. The District Education Officer, Khagaria.
5. The In-Charge, Head Master, plus 2 Arya Kanya Uchcha Vidyalaya, Khagaria.
6. Nilkamal Diwakar S/o Unknown R/o Mohalla Kali Bari, Ward No.- 13, P.S. Khagaria Town, District - Khagaria, Bihar.
7. Nirmal Gyanmayi W/o Narendra Brahmachari R/o Mohalla Gandhi Nagar, Ward No.- 4, P.S.- Khagaria Town, District - Khagaria, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Adv.
Ms. Aastha Ananya, Adv.
For the State : Mr. Sarvesh Kumar, GP24
For the Respondent No. 5: Mr. Sheo Shankar Pd. Singh, Adv.
For the Respondent Nos. 6 and 7: Mr. Vaidhi Raman Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 21-09-2024

Heard learned counsel for the petitioner, learned counsel for the respondent no. 5, learned counsel for the respondents nos. 6 and 7 and learned counsel for the State.

2. The present writ petition has been filed seeking the following reliefs:

“(i) For a writ, order or direction restraining the respondent no. 6 and 7 from illegally usurping and



arrogating the power and function of the duly elected Managing Committee elected by the Aam Sabha purportedly based on an order as contained in memo no. 721 dated 12.03.2024 which has no relevance in the context of the school in question and thus the action of the private respondents in connivance with the in-charge principal in controlling the helm of the school is to be declared as illegal and unlawful.

(ii) For a writ, order or direction in the nature of mandamus commanding the District Education Officer, Khagaria to ensure that the petitioner being the duly elected Secretary of the Managing Committee of the school may be allowed to discharge his duty smoothly without any hindrance and interference either from the private respondents or in-charge principal.

(iii) To quash the letter as contained in letter no. 42 of 2024 dated 21.03.2024 issued by the respondent no. 5 whereby she has acknowledged the assumption of charge by the respondent no. 6 as Secretary and respondent no. 7 as Chairman of the newly constituted managing committee and has written a letter to respondent no. 4 in respect of newly constituted managing committee for appropriate action which letter and acknowledgment is illegal, arbitrary, wholly without jurisdiction and unsustainable.

(iv) For a writ of mandamus commanding respondent no. 4 to ensure that Sri Sailesh Kumar is allowed to discharge his duties as In-Charge Principal of the school after the earlier In-Charge Principal has been placed under suspension by the respondent no. 4 and to restrain the earlier In-Charge Principal to exercise power illegally even after being put under suspension.

(v) For any other relief / reliefs to which the petitioner is found entitled in the facts and circumstances of the case.”

Re: I.A. No. 01 of 2024

3. Having heard learned counsel for the parties and for



the reasons stated in the interlocutory application, the interlocutory application no. 01 of 2024 is allowed and the reliefs prayed in this interlocutory application shall also be treated as a part of the relief prayed in the main writ petition.

4. With the consent of the counsel for the petitioner and counsel representing all the respondents, both the I.A and writ petition were heard at length at the admission stage itself after providing sufficient opportunities for exchange of pleading against both I.A and main writ petition.

Re: C.W.J.C. No. 6918 of 2024

5. The facts of the present case, in brief, is that the school namely +2 Arya Kanya Uchaya Vidyalaya, Khagaria is a minority school and as a minority school it has protection of Article 30 of the Constitution of India. The school is registered under the Societies Registration Act, 1860 and has a separate Bye-laws which is also registered. The school has got its separate identity by virtue of its Bye-laws and Clause 4 of the Bye-laws clearly stipulate that the school is to be governed by a Managing Committee consisting of 11 members and there would be a Secretary and a Chairman who would be elected by the Aam Sabha of Khagaria Arya Samaj. The Principal of the school is an Ad-hoc member of the aforesaid Managing



Committee. Further, Clause 19 of the bye-laws provides for the dissolution of the Managing Committee.

6. Learned counsel for the petitioner submits that the petitioner was elected as Secretary in the election held on 29.01.2023 and other Officer Bearers of the Managing Committee were also elected in the said meeting by the members of the Aam Sabha, Khagaria Arya Samaj and the election was held under the supervision of the Mantri, Khagaria Arya Samaj who has been duly authorized by the District Education Officer to conduct the election. Pursuant to the result of the election the Mantri, Khagaria Arya Samaj issued letter dated 30.01.2023 which has been brought on record vide Annexure-P/5 wherein the list of members of the Managing Committee and post held by them were published. It is further contended that the In- Charge Principal, Smt. Meena Sinha who is also an Ad-hoc member of the Managing Committee, thereafter, informed the District Education Officer vide memo no. 19 dated 28.02.2023 (Annexure P/6) stating therein that the Officer Bearers and members of the Managing Committee including Secretary and Chairman had been duly elected and the list of members who were elected and the post to which they were elected was also conveyed in the said letter and a request



was made for grant of approval to the constitution of the said Managing Committee of which the petitioner was Secretary. Consequent upon approval granted by the District Education Officer (respondent no. 4), the petitioner started to function as Secretary of the Managing Committee of the School. It is further argued that the duration of the Managing Committee is for three years and the term was to expire on 27.02.2026. It is next contended that the petitioner was functioning as Secretary and discharging his duty with utmost dedication.

7. Learned counsel for the petitioner submits by referring to Annexure P/7 that the In-Charge Principal was to retire on 31.07.2023 and consequently, the petitioner as Secretary of the School in question addressed a letter as contained in memo no. 3 dated 28.07.2023 to the then In-Charge Principal, Smt. Meena Sinha that she should handover charge of the School on 31.07.2023 to the senior most teacher Smt. Abha Rani and thereafter inform the undersigned.

8. Learned counsel for the petitioner further submits that the In-Charge Principal Smt. Meena Sinha handed over charge to Smt. Abha Rani on 31.07.2023 and consequently, by referring to Annexure P/8, the Counsel for the petitioner submitted that Smt. Abha Rani (respondent no. 5) was appointed



as In-Charge Principal pursuant to the approval granted by the Petitioner as Secretary of the Managing Committee vide letter no. 10 dated 10.09.2023 and Smt. Abha Rani was thereafter authorized to perform the duties of the In-Charge Principal of the school in question with effect from 10.09.2023. However, the petitioner was bewildered to see the communication vide letter no. 42/24 dated 21.03.2024 issued by the respondent no. 5 wherein the respondent no. 5, the In-charge Principal during the tenure of the existing Managing Committee sought approval of a new Managing Committee constituted by the President, Bihar Raj Arya Pratinidhi Sabha without the dissolution of the present Managing Committee. It is further argued that based on such communication, the respondent nos. 6 and 7 started to arrogate power in collusion with respondent no. 5 and tried to disrupt the academic atmosphere by creating nuisance in the School as a result the academic atmosphere in the School got disturbed. The basis of the constitution of new Managing Committee, was based on the decision passed in CWJC No. 16353 of 2022 wherein a co-ordinate bench of this Court has held that one Sanjiv Chaurasia to be duly elected President of the Bihar Raj Arya Pratinidhi Sabha and would continue to have control & administration of the minority school being run by it and



consequently thereto, the President is alleged to have constituted the Managing Committee of the School in which respondent no. 6 and 7 were nominated as Secretary and Chairman respectively by which constitution of the Managing Committee was clearly in contravention of the registered Bye-laws of the Society of +2 Arya Kanya Uchcha Vidyalaya, Khagaria as the power to elect is entirely vested in terms of Clause 4 of the Bye-laws to members of Khagaria Arya Samaj and the statutory provision governing the minority institution.

9. Learned counsel for the petitioner further submits that earlier also respondent no. 6 was appointed as Secretary of the Managing Committee of the School by the President of the Bihar Raj Arya Pratinidhi Sabha in 2014, pursuant to recommendation made by the said Sanjiv Chaurasia and the respondent no. 6 thereafter tried to interfere with the functioning of the school. The Principal of the school objected and made a complaint to the District Education Officer. It is further contended on behalf of the petitioner that the respondent no. 6 aggrieved by the refusal of the District Education Officer to permit him to arrogate the power of Secretary of the Managing Committee of the School moved before this Court by filing CWJC No. 8762 of 2014.



10. Learned counsel for the petitioner further submits that the District Education Officer after receipt of the complaint by the then In-charge Principal, directed the Block Education Officer to conduct a thorough enquiry regarding the mode and manner of constitution of the Managing Committee and the power of the Arya Pratinidhi Sabha to nominate a Secretary and constitute the Managing Committee. The Block Education Officer, thereafter, conducted an enquiry on the direction of District Education Officer and submitted a report dated 21.05.2015 as contained in Annexure P/2 wherein he had clearly stated that the school in question is a minority school and has a separate Bye-laws and is registered under the Societies Registration Act, 1860 and the Managing Committee of the School is to be constituted in terms of the Bye-laws as per the direction of the Education Department. The report further held that in terms of Clause 4 of the Bye-laws of the School, the power to constitute the Managing Committee of the School is conferred exclusively to Khagaria Arya Samaj and there is no power vested either in the Government or any other Organization to interfere with the functioning of the School. Further, the duration of the Managing Committee is for three years in terms of Clause 4 of the registered Bye-laws and the



power to constitute and dissolve the Managing Committee is also vested with Aam Sabha of Khagaria Arya Samaj. The Block Education Officer, therefore, held the managing committee of the school constituted under the aegis of respondent no. 6 as invalid, illegal and it does not have legal sanctity as it had been constituted by President Bihar Raj Arya Pratinidhi Sabha.

11. Learned counsel for the petitioner further submits that the writ petition filed earlier by respondent no. 6 was heard by this Court and this Court vide order dated 24.11.2015 passed in CWJC No. 8762 of 2014 (Annexure P/3) with a view to maintain smooth administration and academic standard directed the election to be held under the supervision of the District Magistrate and it was further directed to the District Magistrate to prepare a list of voters of Arya Pratinidhi Sabha/+2 Arya Kanya Ucha Vidyalaya and to ensure that the voters are permitted to participate in the election, with free and fairly manner. It is next contended that the School represented through its Secretary elected by the Aam Sabha of Khagaria Arya Samaj assailed the order dated 24.11.2015 passed in CWJC No. 8762 of 2014 by filing LPA No. 340 of 2016. The Hon'ble Division Bench vide order dated 24.04.2017 passed in LPA No. 340 of 2016 (Annexure - P/4) set aside the order dated 24.11.2015 and



in unmistakable terms held that the statutory rule do not permit the District Magistrate to take action with regard to minority school and as per the statute the power to take action is vested with the District Education Officer or Education Department and the direction issued by the Learned Writ Court directing the District Magistrate to conduct elections is contrary to the mandate of the Statute and therefore, the same is unsustainable. It is next submitted that the Managing Committee of the School continued to be constituted regularly after every three years pursuant to election held by the members of the Aam Sambha of Khagaria Arya Samaj and a new Managing Committee were constituted every three years thereafter and the last Managing Committee which has been constituted was on 28.02.2023 wherein the petitioner was duly elected as Secretary of the Managing Committee. Thus, it is contended that the Hon'ble Division Bench clearly held that the election was to be held under the aegis of District Education Officer and only Aam Sabha of Khagaria Arya Samaj was empowered to elect the Managing Committee in terms of the registered Bye-laws and therefore, the President, Bihar Raj Arya Pratinidhi Sabha had no power or jurisdiction to interfere in the election to the Managing Committee of the school in question. It is further submitted on



behalf of the petitioner that the respondent no. 6 aggrieved by the order dated 24.04.2017 passed in LPA No. 340 of 2016 had preferred a Civil Review No. 32 of 2018, contending that he was not made a party and therefore, the order is required to be reviewed, this Court after hearing the parties and perusing the materials available on record held that the *vakalatnama* of the Secretary was already on record and the order passed by the Hon'ble Division Bench that the District Magistrate was not empowered to hold election of the Managing Committee of private institution and according to statute it is only the District Education Officer or Department of Education who is empowered to hold election of the Managing Committee of private institution which finding requires no interference and therefore, the review preferred by the respondent no. 6 was dismissed.

12. Learned counsel for the petitioner further argued that soon after the receipt of the recommendation sent vide letter no. 42/24 dated 21.03.2024 made by the In-charge Principal, Smt. Abha Rani for giving approval to the newly constituted Managing Committee +2 Arya Kanya Uchcha Vidyalaya, Khagaria whereby respondent no. 6 and 7 were nominated as Secretary and Chairman, the District Education Officer



conducted a thorough enquiry regarding the apparent dichotomy in the constitution of fresh Managing Committee consisting of new sets of persons than earlier approved by him. The District Education Officer thereafter scanned the registered Bye-laws of the +2 Arya Kanya Uchcha Vidyalaya, Khagaria and submitted his report to the District Magistrate vide letter dated 20.04.2024 and stated that since the School has been declared as a minority institution, the Managing Committee of the School has power to run the institute independently and no other organization or authority has power to interfere with the functioning of the School. The enquiry report further reveals that the Managing Committee of the School was constituted in which the petitioner was elected as Secretary of the Managing Committee and Paras Kumar Gupta as Chairman in the election held on 29.01.2023 and the then In-charge Principal Smt. Meena Sinha has communicated to the respondent no. 4 regarding the constitution of the Managing Committee and for grant of approval to the new Managing Committee vide letter no. 19 dated 18.02.2023 by which committee was accordingly granted approval and was to continue to function thereafter for a period of 3 years. However, after one year, the present In-charge Principal of the School, namely, Smt Abha Rani has informed the respondent no.



4 vide letter no. 42/24 dated 21.03.2024 to grant approval to the new Managing Committee of the School in which respondent no. 6 and 7 have been nominated as Secretary and Principal of the School respectively which necessitated the respondent no 4 to conduct an enquiry to ascertain and verify the legality and validity of which two of the managing committee of the school has been validly constituted and to prevent mismanagement in the school. The respondent no 4 has recorded a finding which clearly establishes that the constitution of the new managing committee of which respondent no 6 and 7 claims to be Secretary and Chairman is illegal and invalid & the enquiry report dated 20.04.2024 has been brought on record by way of Supplementary Affidavit enclosed as Annexure P/10. Thus, the finding recorded by respondent no 4 clearly indicated that during the continuance of the previous Managing Committee which was elected on 29.01.2023 and whose term was for a period of three years and therefore, the constitution of a fresh Managing Committee without dissolution of the existing Managing Committee in terms of the Bye-laws is clearly illegal and in contravention to registered Bye-laws and the Judgment passed *inter-se* between the parties.

13. Learned counsel for the petitioner further argued



that the In-charge Principal, Smt. Abha Rani who had sent the recommendation for approval of the new managing committee to respondent no 4 vide letter dated 21.03.2024 was issued show cause notice as contained in letter dated 23.03.2024 and 28.03.2024 by the petitioner as Secretary of the Managing Committee of the School and the In-charge Principal despite issuance of show cause notice, failed to submit her explanation as regard acting in defiance of established norms and was accordingly, suspended by the Petitioner as secretary of the managing committee of the school vide letter as contained in memo no. 2624 dated 05.04.2024 and a copy of the same was forwarded to the respondent no. 4 for his approval and consequently, on grant of approval by the District Education Officer as contained in letter no 1896 dated 11.06.2024, the suspension order passed against respondent no 5 became effective but she still continue to arrogate the function of the in-charge Principal and refused to hand over charge to the newly appointed In-charge principal and continued to disturb the academic atmosphere of the school by adopting illegal method and thus, the respondent no 5 be restrained from discharging day to day duties and function as she had been suspended.

14. Learned counsel for the petitioner further submits



that with reference to Annexure P/15, a show cause notice as contained in letter no. 649 dated 04.03.2024 was issued by the District Programme Officer to the respondent no. 5 wherein it is alleged that as per office letter no. 19 dated 28.02.2023 issued by Bihar State Minority Commission, this office has been informed regarding the constitution of the new Managing Committee for +2 Arya Kanya Uchcha Vidyalaya, Khagaria in terms of Regulation 15 of Arya Pratinidhi Sabha by President of Bihar Raj Arya Pratinidhi Sabha wherein respondent no. 6 and 7 has been nominated as Secretary and Chairman of the School respectively whereas the respondent no. 5 had earlier informed this office vide letter no. 19 dated 28.02.2023 wherein the list of Managing Committee of the School was submitted in which the petitioner was shown to be the Secretary and Paras Kumar Gupta was shown as Chairman and therefore, the respondent no. 5 was directed to submit an explanation regarding such contradictory report having been submitted. The In-charge Principal, respondent no. 5 submitted her explanation dated 13.03.2024 (Annexure-P/16) to the District Programme Officer (Establishment) stating therein that the previous In-charge Principal through her letter no. 19 dated 28.02.2023 had sent a recommendation regarding the constitution of the new



Managing Committee based on election held on 09.01.2023. It was further submitted by the respondent no. 5, Smt. Abha Rani that she has been appointed as In-charge Principal by Raj Kumar Fogla (Petitioner) and she has been discharging her duty based on the appointment letter issued by the petitioner and is also acting as a Drawing and Disbursing Officer based on such appointment letter.

15. Leaned counsel for the petitioner further argued that the dispute as to how the Managing Committee is to be constituted has been settled in-interse between the parties by the Judgment and order dated 24.04.2017 passed in LPA No. 340 of 2016, and since the respondent no. 6 was a party to the earlier round of proceeding, the order was binding and enforceable against him and the order passed in CWJC No. 16353 of 2022 would have no relevance as it was passed in a different context. The power to constitute the Managing Committee in terms of the registered Bye-laws is vested in members of Aam Sabha of Khagaria Arya Samaj and the Secretary, Arya Pratinidhi Sabha cannot supersede or nullify the registered Bye-laws of a minority institution and usurp the power to nominate the Secretary and chairman by constituting a new Managing Committee of the School in question and thus arrogating of such



power to a person not authorized by the members of the Aam Sabha of Khagaria Arya Samaj is illegal and invalid.

16. Learned counsel for the petitioner further argued that the respondents have not disputed the election of the petitioner to the post of Secretary of the managing committee of the school in the election held on 09.01.2023 by the Aam Sabha of Khagaria Arya Samaj and the recommendation made by the then In-charge Principal to the respondent no. 4 for approval of the Managing Committee of the School vide letter no. 19 dated 28.02.2023 and the duration of the Committee in terms of the Bye-laws is for three years and further the present In-charge Principal who was subsequently suspended had categorically stated in her explanation submitted to District Programme Officer (Establishment) vide letter dated 13.03.2024 as contained in Annexure P/15 that it was the Petitioner as Secretary of the School who had appointed her as In-charge Principal and after assumption of charge she was acting as a Drawing and Disbursing Officer for payment of salary to the employees of the school and the said factor cumulatively unerringly pointed out that the subsequent committee constituted in which the respondent no. 6 and 7 has been nominated as Chairman and Secretary by the President of the



Bihar Arya Pratinidhi Sabha is clearly untenable and illegal.

17. Learned counsel for the petitioner lastly submits that the respondents have failed to demonstrate that the existing Managing Committee elected on 01.09.2023 was ever dissolved and thus without dissolution of the existing Managing Committee whose term had not expired, the constitution of a fresh Managing Committee at the instance of outside interference cannot be countenanced and therefore, the interference in the functioning of the School by the respondent no. 6 and 7 purportedly on the recommendation made by President of the Arya Pratinidhi Sabha is an abuse of power as it is in direct contravention of the registered Bye-laws by which the School is being governed as a separate identity and thus it was urged that the respondent no. 6 and 7 may be restrained from interfering in the functioning of the School and the District Education Officer as a Nodal Officer may be directed to ensure that the respondent no. 6 and 7 is not allowed to interfere in the functioning of the School.

18. The respondent nos. 6 and 7 has entered appearance and filed a joint Counter Affidavit. Learned counsel for the respondent no. 6 and 7 raised a preliminary objection regarding the maintainability of the writ petition on the ground



that the constitution of the rival Managing Committee and the nomination of the Secretary of the School being a disputed question of fact cannot be agitated in a writ jurisdiction. He further stated that pursuant to Judgment and order dated 30.01.2023 passed in CWJC No. 16353 of 2022 by this Court, wherein it was clearly held that the writ petitioner namely Sanjiv Chaurasia was recognized as President of the Bihar Rajya Arya Pratinidhi Sabha, Patna and the State Government was refrained from passing any order with regard to the management and affair of the Society which governed the administration of minority institution and the President shall be allowed to continue to have control and administration of the minority institution and therefore, the Managing Committee constituted by the President, Bihar Rajya Arya Pratinidhi Sabha, Patna of which the respondent nos. 6 and 7 were nominated as Secretary and Chairman cannot be faulted with as power to elect and nominate has been conferred and recognized by the said Judgment. Since, the President of Bihar Rajya Arya Pratinidhi Sabha, Patna has constituted the Managing Committee of the School in question of which respondent no. 6 and 7 have been nominated as Secretary and Chairman and therefore, the said Managing Committee is valid and legal as no other authority has



power to constitute the Managing Committee in terms of the above Judgment. It is further argued that in the previous election also, the respondent nos. 6 and 7 were elected as Secretary and Chairman of the School respectively and their election was duly approved by President of Bihar Rajya Arya Pratinidhi Sabha, Patna namely Sanjiv Chaurasia who had been ousted from the said post by the State Government and, subsequently, was resurrected pursuant to the Judgment and order dated 30.01.2023 passed in CWJC No. 16353 of 2022 and under such circumstances, the approval to the previous Managing Committee would also stand validated. He further submits that it was only the President who is empowered to conduct the election and therefore, the District Education Officer has no authority and power to conduct the election and give his approval.

19. Per contra, learned counsel for the respondent nos. 6 and 7 further submits that a fresh election of Managing Committee of the School was held on 20.01.2024, whereas the respondents nos.6 and 7 were again elected as Secretary and President respectively of the Managing Committee of the School, which was duly approved by Bihar Rajya Arya Pratinidhi Sabha (Annexure- R/D of the counter affidavit filed



on behalf of respondent nos. 6 and 7).

20. Learned counsel for the respondent nos. 6 and 7 further submits that the Bihar Rajya Arya Pratinidhi Sabha again by its Letter dated 14.06.2024 made available to the Head Mistress of the School the list of Office bearers of the School, which shows the Resp. No. 6 and 7 as the Secretary and President respectively of the Managing Committee of the School (Annexeure- R/F of the counter affidavit).

21. Learned counsel for the respondent nos. 6 and 7 further submits that Smt. Meena Sinha, the Head Mistress of the School at the relevant time was hand in gloves with Sri Raj Kumar Fogala and there was illegal withdrawal of Rs. 34,93,000/- from the Bank Account of the School and the District Programme Officer, Establishment, Khagaria by his Letter No.3190 dated 30.12.2022 (Annexure-R/G) had requested the Block Education Officer, Khagaria to get an FIR lodged against Smt. Meena Sinha, the Head Mistress of the School and others and on getting knowledge of such move against her, Smt. Meena Sinha herself, on 30.12.2022, got an information lodged before the Station House Officer, Town P.S., Khagaria against Sri Nand Lal Prasad Sah, the retired Head Master of the School and others for illegal withdrawal of Rs. 34,93,000/- from the



Bank Account of the School and on that basis Khagaria P.S. Case No. 1380/2022 was instituted (Annexeure- P/14 of the writ petition). The Inspector of Police, Khagaria, however, in his supervision report dated 30.04.2023 directed the Investigating Officer of the case to arrest Smt. Meena Sinha and others.

22. Learned counsel for the respondent nos. 6 and 7 further submits that District Education Officer has no authority to conduct the election of Managing Committee of the School and to grant approval to the election of Management Committee of the school. There is no recognition of the alleged Managing Committee constituted under the aegis of Sri Shambhu Jha wherein Sri Raj Kumar Fogala is said to have been elected as Secretary of the Managing Committee of the School by Bihar Rajya Arya Pratinidhi Sabha. He further submits that as regards appointment of Sri Shailesh Kumar, it is stated that he was not a trained teacher and his appointment was not in accordance with the provision of Section 18(3) (b) of Bihar Non-Governmental Secondary School (Management and Control) Act, 1981 and he cannot be appointed as In-charge Head Master of the school. Hence, the present writ petition is devoid of any merit and is fit to be dismissed.

23. The respondent no. 5 (Abha Rani) in her capacity



as In-charge Principal has also filed a separate counter affidavit and has stated that pursuant to list of Officer Bearer provided by Bihar Rajya Arya Pratinidhi Sabha, Patna for +2 Kanya Uchcha Vidyalaya in which respondent no. 6 and 7 were nominated as Secretary and Chairman of the School, she has forwarded the recommendation to the respondent no. 4 by stating that they had taken charge after such nomination.

24. Learned counsel for the respondent no. 5 submits that at present Sri Sanjiv Chaurasiya (M.L.A.) is president (Pradhan) of Bihar Rajya Patinidhi Sabha Patna having its registered office of Sri Munishwaranand Bhawan, Naya Tola, P.S. Kadamkuan, District: Patna. Further, the +2 Arya Kanya Uchaya Vidalaya Khagaria is one of the minority school among list of eight minority schools of Bihar (Annexure: R/A of the counter affidavit filed on behalf of respondent no. 5). At present Dr. Abha Rani is In- charge Headmaster of +2 Arya Kanya Uchaya Vidalaya Khagaria. A letter no. 11/2024 dated 14.06.2024 issued by Bihar Rajya Pratinidhi Sabha, Patna, mentioning the list of the members of the Arya Samaj Khagaria and +2 Arya Kanya Uchcha Vidyalaya, Khagaria and also the members/officers of the school's management committee, wherein Name of Dr. Abha Rani is also present in the list of



Managing Committee of +2 Arya Kanya Uchya Vidyalaya, Khagaria as Headmaster of the said college (Annexure: R/C of the counter affidavit filed on behalf of respondent no. 5).

25. Learned counsel for the respondent no. 5 further submits that a direction has been given by the Director, Secondary Education vide Memo No. 1666 dated 11.11.2023 in light of order passed by Hon'ble Court in C.W.J.C. No. 16353 of 2022 dated 30.01.2023. It is stated that the State Government doesn't have any role in Management and Control over the administration of the minority institution (Annexure- R/B of the counter affidavit against I.A. No. 01 of 2024 filed by respondent no.5). The Bihar Arya Pratinidhi Sabha Bihar, Patna recognized respondent no.6 and 7 as Secretary and Chairman of the Managing Committee of the School. He further submits that Bihar Arya Pratinidhi Sabha Patna not recognized Sri Raj Kumar Fogla as Secretary of the +2 Arya Kanya Uchaya Vidyalaya Khagaria. After that the In-charge Headmaster Dr. Abha Rani respondent no.5 asked about membership of the Arya Samaj of the Khagaria from Raj Kumar Fogla. Thereafter, Sri Raj Kumar Fogla started taking action against In-charge Headmaster Dr. Abha Rani and suspended her without holding any meeting or passing any proposal from the school managing



committee Khagaria and thus suspension of Headmaster is not sustainable in the eye of law and order of suspension of Respondent no.5 is fit to be set aside.

26. Learned counsel for the respondent no. 5 further submits that the In-charge Headmaster has nothing to do in dispute of President or Secretary. The Headmaster is only Grinding Weevils with Barely. He further submits that in the present case it needs oral and documentary evidence and thus disputed question of fact cannot be decided in proceeding under Article 226 of the Constitution of India. Since a preliminary objection has been raised by the learned counsel for respondent nos. 6 and 7 regarding the maintainability of the writ petition on the ground that the writ petition involved disputed question of fact regarding the constitution of rival Managing Committee which cannot be decided in writ jurisdiction, the same is required to be decided first.

27. Having heard learned counsel for the parties, learned counsel for the petitioner rightly referred to the enquiry report contained in Letter no.1323 dated 20.04.2024 conducted by the District Education Officer, respondent no. 4 as contained in Annexure-P/10 wherein the District Education Officer has conducted a threadbare enquiry after perusing the registered



Bye-laws of the Society, the material available on record and the Judgment passed inter-se between the parties with a view to resolve the dispute arising out of two recommendations regarding the constitution of Managing Committee sent earlier vide letter no. 19 dated 28.02.2023 by the then In-charge Principal which committee has approved and the subsequent recommendation as contained in letter no. 42/24 dated 21.03.2024 sent by the present In-charge Principal for giving approval to the New Managing Committee without there being any resolution for dissolution of the earlier Managing Committee which necessitated an enquiry to determine and adjudicate the issue regarding as to who among the two is the valid Managing Committee as rival claimant were putting their stake for the post of Secretary and Chairman respectively and there being a tussle of supremacy for control over the management of the school.

28. It is relevant to state the brief skeleton facts which is relevant for proper adjudication of the present writ petition.

“The Sarvadeshik Arya Pratinidhi Sabha (hereinafter referred to as "SAPS"), New Delhi is a Society registered under the Societies Registration Act, 1860. The General Body of the SAPS is formed by the delegates sent by its 21 afflicted Sabhas, Bihar Raj Arya Pratinidhi Sabha (hereinafter referred to as "BRAPS") is



one of the affiliated Sabhas of SAPS, New Delhi. It is further relevant to state that there are 8 schools which have been established by BRAPS and +2 Arya Kanya Uccha Vidyalaya, Khagaria is one such school.

After establishment of +2 Arya Kanya Uccha Vidyalaya, Khagaria, the school in question through its local office got itself registered under the Societies Registration Act, 1860 on 19.10.1995 having Registration No. 882. The +2 Arya Kanya Uccha Vidyalaya, Khagaria therefore, is registered society and has framed its own separate registered Bye-laws and the functioning and management of the school in question is controlled by the provisions of the Bye-laws. The Bye-laws provide for election of a Managing Committee for running the school in question and the Secretary is vested with the financial and overall power to run the school in question. Further, the mode of electing the members and office bearers of the Managing Committee has also been provided in the Bye-laws wherein a list of voters of Khagaria Arya Samaj is to elect the members of the Managing Committee in the Aam Sabha. The various posts of the Managing Committee for which the election is to be held is also indicated in the Bye-laws. Thus, the Bye-laws spelt out the rules and regulation created by the Society which underlie its business, governance and decision making process and thus it constitute a contract between the Society represented by its members and its constituent.”

29. The Hon'ble Supreme Court in the case of *Zoroastrian Co-operative Housing Society Limited and Another Vs. District Registrar Co-operative Societies (Urban) and Others* reported in **2005 (5) SCC 632** has clearly held that



the terms of the Bye-laws is paramount and would prevail and bind the members of the Society and the provisions of the Bye-laws could not be invalidated either on the ground that it violates fundamental right contained in Part-III of the Constitution or is contrary to Public Policy or contrary to statutory provisions contained in Contract Act or Transfer of Property Act. Thus, the Bye- laws of the registered Society of the School in question is the primordial document which is required to be looked into for the purpose of ascertaining the mode and method of the constitution of the Managing Committee of a school run by a society, its duration and the dissolution and no other Authority or Organization even the Registrar of the Co-operative Society can direct to act in contravention of the Bye-laws of the Society.

30. Thus it is apt to quote Clause 4 and 19 of the registered Bye-laws of the School in question as contained in Annexure P/1 to the writ petition :-

"4. कार्यकारिणी समिति का गठन :-

यह विद्यालय आर्य समाज खगड़िया द्वारा स्थापित एवं संचालित होने के कारण इसके कार्यकारिणी समिति के 3 सदस्य आर्य समाज खगड़िया द्वारा ही मनोनित होंगे और शेष 6 सदस्य आम सभा द्वारा निर्वाचित होगी। उनके कुल संख्या 11 तक होगी। समिति आर्य कन्या उच्च विद्यालय का तीन वर्षों तक कार्यरत रहेगी। किसी कारणवश समिति में रिक्त पद होने पर रिक्त स्थान को पूर्ति अन्य सदस्यों द्वारा की जायेगी जिसकी संपुष्टि वे अपने साधारण सभा द्वारा करायेगा। निवृत्त सदस्य



पुनः मनोनित हो सकते हैं।

19. विघटन :-

क. अगर किसी कारणवश का विघटन करना पड़े तो विघटन आर्य समाज खगड़िया के 14 सदस्यों द्वारा पारित प्रस्ताव करने पर ही किया जायेगा।

ख. विघटन के पश्चात् इस संस्था का चल या अचल सम्पत्ति आर्य समाज खगड़िया की होगी और आर्य समाज खगड़िया ही इसके ऋण इत्यादि चुकाने का जिम्मेवार हो।

ग. आर्य समाज खगड़िया उसे पुनः चालू कर सकती है अथवा किसी अन्य संस्था के स्थापना ज्ञात संस्था की सम्पत्ति आर्य कन्या उच्च विद्यालय खगड़िया के विघटन होने पर कर सकता है।"

31. Therefore, this court has no hesitation to hold that the constitution of the Managing Committee of the school in question would thus exclusively be governed by its registered Bye-laws and no other Authority or Institution would have power to manage or control the Managing Committee by virtue of its position or power as it is only the Aam Sabha of Khagaria Arya Samaj who would elect the Managing Committee of the School through election held under the aegis of District Education Officer who would approve such election by giving its approval in-terms of the statutory provision governing minority aided school. Since, the respondent no. 4 (District Education Officer) has refused to give approval to the nomination of respondent no. 6 and 7 as Secretary and Chairman of the Managing Committee of the school which is apparent from the reading of the enquiry report dated



20.04.2024 (Annexure-P/10 to the writ petition), the claim of respondent no. 6 and 7 based on approval granted by the Pradhan of Bihar Rajya Arya Pratinidhi Sabha, Patna is clearly contrary to Bye- laws and cannot be countenanced. Thus, the respondent no. 6 and 7 cannot be permitted to arrogate the function of Secretary and Chairman respectively and the act of interference based on approval given by President, Bihar Rajya Arya Pratinidhi Sabha, Patna is clearly illegal and unsustainable.

32. Furthermore, the contention of the respondent that in view of the subsequent Judgment and order dated 30.01.2023 passed in CWJC No. 16353 of 2022, the power to constitute the new Managing Committee is vested in the President of Bihar Rajya Arya Pratinidhi Sabha, Patna as this Hon'ble Court in paragraph no. 19 of the report has clearly held that the President of Bihar Rajya Arya Pratinidhi Sabha, Patna shall be allowed to continue to have control and administration of minority institution being run by it is legally not sustainable as the dispute in the aforesaid writ petition was not relating to constitution of the Managing Committee of the present School but was in reference to the order dated 02.01.2022 passed by the Director, Secondary Education, Government of Bihar rescinding his earlier order dated 28.05.2021 by which the writ petitioner of



CWJC No. 16353 of 2022 was allowed to continue to function as Pradhan of Bihar Rajya Arya Pratinidhi Sabha, Patna and it was further ordered that the respondent no. 5 of that case would continue as Pradhan of Bihar Rajya Arya Pratinidhi Sabha, Patna which order was set aside by holding that the State Government has no power and authority to interfere in the functioning of a society which governs minority institution to which proposition there can be no quarrel and constitute the ratio decidendi as the reason behind the judgment but the subsequent observation that the petitioner shall be allowed to continue to have control and administration of the minority institution is an obiter and was not necessary and essential to resolve the dispute and therefore, not legally binding as precedent. Thus, the respondents cannot take cue from the said observation to bestow power and authority on the President of Bihar Rajya Arya Pratinidhi Sabha, Patna to nominate Secretary and Chairman of the School which in itself would be contrary to the explicit terms contained in registered Bye-laws of School.

33. Since, the School is registered as a co-operative society under Bihar Co-operative Society Act having its certificate of registration and a copy of bye laws sealed and signed by the Registrar and is therefore, a separate entity which



would govern its management and functioning. The Bye-laws itself provides for the mode and method for the constitution of the Managing Committee and the members of the Aam Sabha of Khagaria Arya Samaj would constitute the Managing Committee by holding of election and thus the said observation rendered in different context would not empower the Pradhan of Bihar Rajya Arya Pratinidhi Sabha, Patna to act contrary to the registered Bye-laws of the society. The statutory provision regarding functioning of aided minority school empowers the District Education officer or the department of Education to supervise the election and approve the managing committee of the school which power cannot be arrogated by an authority other than the competent authority i.e District Education Officer and therefore, the act of nomination and approval by Pradhan is clearly impermissible.

34. It is further to be noted that the respondent no 6 and the school was a party to the previous round of litigation and the present controversy was directly and substantially in issue as to who was competent to supervise the election and accord approval to the managing committee of the school in question and the judgment of this Hon'ble court in LPA no 340/2016 and review petition was directly on the point that it is



the District Education officer who was competent to supervise the election and approve the managing committee and no other authority/organization has power to interfere in the running of private minority institution except the District Education Officer/Department of Education and therefore, the respondent no 6 and 7 cannot be permitted to re-open the said issue in subsequent litigation as the principle of *res-judicata* and issue estoppel applies with full vigor as it bars the Court from entertaining the same issue as the decision arrived at between the parties would bind the parties and the principle of *res-judicata* would continue to operate, and since the issue has already been decided against respondent no 6, he cannot be permitted from raising the same issue in later proceeding and the later proceeding will be dealt with similarly as was done in the previous proceeding.

35. It is important to quote the judgment of the Hon'ble Supreme Court in the case of the *Bhanu Kumar Jain vs Archana Kumar* reported in *AIR 2005 SC 626* which applies squarely to fact situation arising herein and relevant portion of the report is as follows-

There is a distinction between 'issue estoppel' and 'res judicata' [See Thoday vs. Thoday 1964 (1) All. ER 341] Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the



parties whereas the doctrine issue estoppel is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. The doctrine of res-judicata creates a different kind of estoppel viz Estoppel By Accord.

*In a case of this nature, however, the doctrine of 'issue estoppel' as also 'cause of action estoppel' may arise. In **Thoday** (supra) Lord Diplock held:*

"cause of action estoppel" is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e., judgment was given on it, it is said to be merged in the judgment. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam."

*The said dicta was followed in **Barber vs. Staffordshire Country Council, (1996) 2 All ER 748**. A cause of action estoppel arises where in two different proceedings identical issues are raised, in which event, the latter proceedings between the same parties shall be dealt with similarly as was done in the previous proceedings. In such an event the bar is absolute in relation to all points decided save and except allegation of fraud and collusion. [See **C. (a minor) Vs. Hackney London Borough Council, (1996) 1 All ER 973**].*

36. Considering the facts and circumstances of the case and perused the records, this Court has no hesitation in holding that the recommendation sent by respondent no 5 vide letter no 42/2024 dated 21.03.2024 to respondent no 4 that the respondent no 6 and 7 has assumed charge of the managing committee of the school is illegal, unwarranted and done for unauthorized purpose and in conscience violation of law to



disrupt the academic atmosphere and smooth functioning of the school and the action of respondent no 4 in invalidating the new Managing committee of respondent no 6 and 7 and refusing to grant its approval during the continuance of the existing Managing Committee, cannot be found fault with and therefore, to ensure better administration and prevent disruption of good academic atmosphere for a school running exclusively for girls in the backwater of Bihar, it is imperative to pass orders restraining the respondent no. 6 and 7 from interfering in the functioning of the minority school and respondent no 4 is hereby directed to oversee that the school function smoothly without interference of respondent no 6 and 7. Since, the order of suspension of Smt Abha Rani (Respondent no-5) passed by the petitioner was approved by the District Education officer vide letter no 1896 dated 11.06.2024 (Annexure- p/12) and same had remained unchallenged, the respondent no 5 is hereby directed to handover charge to the next incumbent for smooth running and better administration of the school and to prevent infighting which would jeopardizes the career of young girls studying in the school.

37. With the aforesaid directions, this writ application stands disposed of.



38. Pending application, if any, shall be disposed of accordingly.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	20.08.2024
Uploading Date	21.09.2024
Transmission Date	NA

