

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7413 of 2024

1. Bhola Yadav Son of Sri Ram Prakash Yadav, resident of Village and P.O- Kapchhahi, P.S.- Bahadurpur, District-Darbhanga.
2. Madan Sharma, J.P. Senani, Son of Late Mathura Sharma, Resident of Mohalla- Modantola, Ward No.19, P.O and P.S- Mokama, District- Patna.
3. Chitranjan Gagan, Son of late Bindeshwari Prasad Mishr, resident of Village and P.O-Satpura, P.S.-Bhagwanpur, District- Vaishali.
4. Srinarayan Mahto, Son of Sri Ghuran Mahto, resident of Village and P.O. and P.S.- Devdha, District- Madhubani.
5. Ramashish Yadav, Son of Late Menhi Yadav, resident of village-Loma, P.O. and P.S.- Saharghat, District- Madhubani.
6. Siyaram Prasad Yadav, Son of Late Ambika Prasad Yadav, resident of village-Hakikatpur, P.O-Dewariya, P.S.- Awatar Nagar, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department Government of Bihar, Patna.
2. The Principal Secretary, Education Department Government of Bihar, Patna.
3. The Joint Secretary, Education Department Government of Bihar, Patna.
4. The Additional Secretary, Education Department Government of Bihar, Patna.
5. Sri Sunil Kumar, son of not known, Additional Secretary, Education Department Government of Bihar, Patna.
6. The Union of India represented through Secretary, Ministry of Education, Government of India.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V.Giri, Sr. Advocate Mr.Ashish Giri,, Advocate Mr. Saunil Kumar Jha, Advocate Ms. Riya Giri, Advocate
For the State	:	Mr. P.K.Shahi, A.G. Mr. Manish Dhari Singh, AC to AG
For the UOI	:	Mr. Ram Anurag Singh, CGC



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 11-12-2024

The petitioners are the Chairman and Members of the Sanskrit Education Board (for brevity 'the Board') constituted under the Bihar Sanskrit Education Board Act, 1981 (for brevity 'Act of 1981'); which Board stood dissolved on the amendment of the Act of 1981 by the Bihar Sanskrit Education Board (Amendment) Act, 2024 (for brevity 'the Amendment Act'). The vires of the Amendment Act is challenged, on grounds of it being violative of Article 14 of the Constitution of India & contrary to the purpose of the main Act.

2. Shri Y.V.Giri, learned Senior Counsel appearing for the petitioners, took us through the Act of 1981; especially the establishment and constitution, by way of Section 3 and Section 4, the term of office, which is specified to be a period of three years, with effect from the date of the respective appointment or nomination. Section 9 delineates a procedure for removal of the Chairman and Section 25 deals with dissolution of existing Bihar Sanskrit Education Board. The transitory provision under Section 26 provides for the Chairman and *ex-officio* members constituted in the Board to continue till a Board is duly



constituted in accordance with the provisions of the Act. The present amendments seek to bring in a dissolution, during the term of a duly constituted Board, which is politically motivated by reason of the change in political alliances and frustrates the very object of the Act, which also violates the equality clause under Articles 14; are the compelling arguments. The learned Senior Counsel also relied on a Division Bench decision of this Court in ***Dr. Ashish Kumar Sinha & Ors. Vs. Union of India & Ors., 2022(6) BLJ 369*** and ***Shayara Bano v. Union of India, (2017) 9 SCC 1***, a decision of the Hon'ble Supreme Court.

3. The learned Advocate General argued that there is no vested right conferred on the members, to continue for the three-year term and it is in advancement of the object of the Act; which is promotion of education in Sanskrit, that the amendments have been affected. There is no contention raised of the accepted grounds to challenge a legislation, being lack of legislative competence or violation of the constitutional provisions, including that of any fundamental rights guaranteed under the Constitution.

4. By reliance to the decision of the Hon'ble Supreme Court in ***Shayara Bano*** (supra), we should understand that the reference to Article 14, is to urge the contention that the



amendment is arbitrary, which is an additional ground to challenge the legislation other than that of lack of legislative competence and violation of fundamental rights guaranteed in Part-III of the Constitution or violation of any other constitutional provision.

5. In *Shayara Bano* (supra), it was noticed that there was a discordant note struck in *State of A.P. v. McDowell & Co., (1996) 3 SCC 709*, by a three-Judge Bench in declaring that, but for the two grounds to challenge a law made by the Parliament or the Legislature; viz: lack of legislative competence and violation of fundamental rights or other constitutional provisions; no third ground exists. The three-Judge Bench in *McDowell & Co.* (supra); according to the five-Judge Bench in *Shayara Bano* (supra), failed to notice the Constitution Bench decision in *Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722* and *K.R.Lakshmanan v. State of Tamilnadu, (1996) 2 SCC 226*. A Co-ordinate Bench in *Mohd. Arif v. Registrar, Supreme Court of India & Ors., (2014) 9 SCC 737* followed *Maneka Gandhi v. Union of India, (1978) 1 SCC 248*, to find that a series of judgments delivered after *Maneka Gandhi* (supra), declared that Article 21 was to be read along with other fundamental rights and so read; not only



has the procedure established by law to be just, fair and reasonable, but also the law itself has to be reasonable as Articles 14 and 19 have to be read into Article 21. These decisions were also not noticed by the three-Judge Bench in ***McDowell & Co.*** (supra) case. It was held so in Paragraph-87 of ***Shayara Bano*** (supra):

“87. The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three-Judge Bench decision in *McDowell* [*State of A.P. v. McDowell and Co.*, (1996) 3 SCC 709] when it is said that a constitutional challenge can succeed on the ground that a law is “disproportionate, excessive or unreasonable”, yet such challenge would fail on the very ground of the law being “unreasonable, unnecessary or unwarranted”. The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution.”

6. In ***Shayara Bano*** (supra), it was noticed that after ***McDowell & Co.*** (supra), the Hon’ble Supreme Court has negated statutory law on the ground of it being arbitrary and,



therefore, violative of Article 14 of the Constitution of India. Specific reference was made to *Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1* from which Paragraph-219 was extracted:-

“219. A legislation passed by Parliament can be challenged only on constitutionally recognised grounds. Ordinarily, grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the legislation by invoking the power of judicial review. A legislation could also be challenged as unreasonable if it violates the principles of equality adumbrated in our Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground. The validity of a constitutional amendment and the validity of plenary legislation have to be decided purely as questions of constitutional law. This Court in *State of Rajasthan v. Union of India* [(1977) 3 SCC 592] said : (SCC p. 660, para 149)

‘149. ... if a question brought before the court is purely a political question not involving determination of any legal or constitutional right or obligation, the court would not entertain it, since the court is concerned only with adjudication of legal rights and liabilities.’

Therefore, the plea of the petitioner that the legislation itself was intended to please a section of the community as part of the vote catching mechanism is not a legally acceptable plea and it is only to be rejected.”



7. We have to hence examine whether the amendments are in any manner disproportionate, excessive and manifestly unreasonable; thus, making it arbitrary.

8. Despite asserting that the amendments are *ultra vires* Article 14, there is nothing pointed out to show that it is arbitrary; but for the fact that the duly constituted Board was dissolved before its term was completed. The impugned Amendment Act is produced as Annexure-P4 in the writ petition.

9. Before we look at the provisions of the Amendment Act, we have to notice from the Preamble of the Act of 1981, that the object itself was to provide for an autonomous Board for the development and better supervision of Sanskrit Education, upto Madhyama Standard in the State of Bihar. The powers and functions of the Board are delineated under Section 6 of the Act of 1981, which confer on the Board the power to direct, supervise and control Sanskrit Education upto Madhyama Standard and particularly to grant recognition to Sanskrit Schools with the prior approval of the State Government, withdraw recognition of recognized Sanskrit institutions, to maintain a register of recognized Sanskrit Schools and Tols; to provide for the syllabi and conduct



examinations; to carry out the preparation, publication and sale of text-books and to bring out from time to time the list of books approved for use in Sanskrit Schools and Tols and so on and so forth, all aimed at the advancement of Sanskrit education upto the Madhyama Standard in the State.

10. True, the tenure of the Board was for three years and there was no power with the Government conferred by the statute to dissolve the Board, during its term; which has been brought in by amendment of Section 5, incorporating subsection (3), which, notwithstanding the tenure prescribed, confers on the Government the power to dissolve the Board in larger public interest. The amendment aligns with the principle that any authority conferred with the power to constitute a Board or any other body, will also have the power to dissolve it.

11. Sections 25 and 26, as it existed in the Act of 1981, is more in the way of a transitory provision insofar as the Board was to be originally constituted under the Bihar Education Code, 1961, which was replaced with the Act of 1981. Hence it cannot be argued that any dissolution should result in continuance of the members of the duly constituted Board, till another Board is constituted.

12. The obvious lacuna in the enactment was sought



to be rectified by the present amendment. The Government, who was conferred with the authority to constitute a Board for betterment of Sanskrit education in the State, by statute was also conceded the power to dissolve it; but only in larger public interest, with provision as to how the Board would function in the interregnum under an Administrator; which is also hedged in with the condition that a new Board would be constituted in three months. The State Legislature has the legislative competence and the amendments do not violate any of the constitutional provisions, including those guaranteeing fundamental rights.

13. In the introduction to the Amendment Act, the new National Education Policy, 2020 of the Central Government and the Bihar Caste Based Survey Report, 2022-23 were reckoned to find that it has become imperative to align the laws regulating various educational curriculums, including Sanskrit Education with the above policy. It is for re-organisation, restructuring and to provide an effective tool for imparting modern education to the students, apart from linguistics and religious studies, that the amendments were brought in.

14. As we found, sub-section (3) of Section 5; newly introduced; is a *non obstante* clause, which makes the tenure



prescribed in Section 5(1), subject to the power of the Government to dissolve the Board at any time, if it is satisfied that the dissolution is in the larger public interest to make the functioning of the Board consistent with the aim and object of the Act, which provision has not been used insofar as the petitioners are concerned, since the duly constituted Board under the Act of 1981, wherein the petitioners are the Chairman and Members, stand dissolved by virtue of the introduction of sub-section (6)(a) to Section 25 of the Act of 1981. It is also provided by sub-clause(b) of Section 25(6) that on dissolution, the Government, shall appoint an Administrator, not below the rank of Secretary to the Government, to manage the affairs of the Board.

15. It has been argued that, the appointment of a Secretary, would not further the cause of Sanskrit Education, which is the primary object of the enactment. However, this contention fails to take note of the fact that sub-section (8) introduced under Section 25, by the Amendment Act, requires the State Government to constitute a new Sanskrit Education Board latest within a period of three months from the date of its dissolution.

16. There is also a procedure delineated under sub-



section (7) to appoint a Committee of experts, upon dissolution of the Board to study and make recommendation for re-organization and re-structuring of Sanskrit Education with a view to make it consistent with the National Education Policy and introduce curriculum of education to strengthen the present teaching in various modern subjects including Science, Humanities and also to include other vocational subjects. The Committee of experts is to be constituted with five members, of which at least one should be a person possessed of adequate knowledge of Sanskrit and oriental studies, which Committee shall submit its recommendation to the State Government within a period of one month.

17. The very object of the amendment of the Act of 1981 is to re-organise and re-structure Sanskrit Education in the State of Bihar and to implement a new Education Policy as has been asserted in the counter affidavit. As we noticed hereinabove, no valid ground is raised as to the unconstitutionality of the statute. The only grievance of the petitioners is that by the statutory dissolution of the Board, their membership has been abruptly terminated; which is not a ground for declaring the statute itself to be *ultra vires*.

18. True, the object of the statute cannot be served by



appointment of an Administrator, that too an executive officer in place of the Board itself; but the same is only temporary. A Committee of experts have to be appointed and its recommendations have to be placed before the Government within three months. A new Board has to be constituted by the Government, which is a statutory mandate to be necessarily complied with by the State Government.

19. The mere fact that the Board has not been constituted till now, would not result in the legislation being struck down as unconstitutional. The State Legislature has the competence to bring out the Amendment Act and it does not violate any constitutional provision. As far as the violation of the equality clause under Article 14 and the ground raised of the legislation being arbitrary, nothing has been brought out insofar as the arbitrariness is concerned.

20. Reliance was placed by the petitioners also on **Dr. Ashish Kumar Sinha** (Supra); by a Division Bench of this Court. Therein, the challenge was against the amendment to Bihar Municipal Act, 2007 by which the power to select, appoint, post and transfer of an employee by a Municipality vested with the State Government, even though for the purpose of salary, wages and all pecuniary benefits, the responsibility



was that of the Municipality itself. The contention was that the amending Act caused violence to the parent Act, which earlier enactment envisaged the administrative control resting with the Empowered Standing Committee (ESC) of the Local Body. The power of appointment, salary fixation and other terms, prior to the amendment, were left entirely to the Municipal Corporation. It was in this context, especially noticing the power conferred on the Government under Sections 65, 66, 67, 68 and 69; which is the power of the State Government to dissolve a Municipality, that it was held that the Amendment Act, reducing or taking away the say of the ESC in appointment of officers and control thereof, would be in contravention of the scheme of the parent Act. The finding was also based on Article 243W of the Constitution of India, which enabled the legislature of a State to endow the Municipalities with such powers and authority, as may be necessary to function as institution of self-governments; in which provision, the word 'may' was directed to be read as 'shall'. We find no such contravention or derogation of the objects of the parent Act by the enactment of the amending Act, which is challenged herein. The decision cited has no application.

12. Constitutionality of a statute is to be presumed



and the burden of proof rests heavily on the person questioning the constitutionality, on any ground including that of arbitrariness. The petitioners have miserably failed to make out a case of arbitrariness, especially since the ground raised is only of an abrupt cessation of their memberships.

13. We find absolutely no reason to interfere with the amendments made, the writ petition stands dismissed.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

Sujit/-

(Partha Sarthy, J)

AFR/NAFR	NAFR
CAV DATE	27.11.2024
Uploading Date	11.12.2024
Transmission Date	

