

State of Bihar and Others

Vs

Chandradip Rai and Others

Civil Appeal No. 260 of 1981

(A.P. Sen, E.S. Venkataramiah JJ)

22.01.1981

### JUDGMENT

1. This appeal by special leave is directed against a judgment of the Patna High Court dated May 23, 1980, by which the High Court directed the appellant to take steps for the proper management of the Middle School, Bela, in the district of Patna and to pay salary to respondents 2 to 6 who are teachers of the School, in accordance with law.

2. The learned Attorney-General appearing on behalf of the State of Bihar, rightly makes a grievance that no such direction could be made by the High Court. The Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 was enacted for the better organisation and development of elementary education in the State of Bihar. Sub-sections (2) and (3) of Section 3 of the Act provide as follows :

3. (2) Aided Elementary School, the Managing Committees of which have handed over voluntarily the control of the school to the Government, shall be taken over by the State Government with effect from the date which shall be determined by the District Committee referred to in sub-section (4) for this purpose.

(3) Elementary Schools administered by any public or private undertakings shall be taken over by the State Government by publication of a notification in the official gazette with effect from the date to be specified therein.

Section 4 of the Act provides for the consequences that ensue upon the taking over of such schools under Section 3. Under sub-section (1) of Section 4 of the Act, all the assets and properties whether moveable or immovable owned or possessed by the schools taken over by the Government under Section 3, stand transferred to and are deemed to have come into the possession and ownership of the State Government. Sub-section (2) of Section 4 of the Act, which is relevant for our purposes reads as follows :

Every officer, teacher or other employee holding any office or post in the school taken over by the State Government shall be deemed to have been transferred to and become an officer, teacher or employee of the State Government with such designation as the State Government may determine and shall hold office by the same tenure, at the same remuneration and on the terms and conditions of service as he would have held before the taking over of the said school and shall continue to do so unless and until such tenure, remuneration, terms and conditions of service are duly altered by the State Government.

3. It is evident that the school has not been taken over by the State Government. The District Committee never recommended for the taking over of control and management of the school under sub-section (2) of Section 3 of the Act. There is also no notification issued by the State Government under sub-section (3) of Section 3 of the Act. The school not having been taken over by the State Government under Section 3 of the Act, the consequences set forth under sub-section (2) of Section 4 do not ensue. That being so, respondents 2 to 6 were not entitled to the benefit of sub-section (2) of Section 4 of the Act. The High Court was, therefore, not justified in issuing of writ of mandamus directing the State Government to take steps for the proper management of the school or for payment of salary to the respondents. Finding it difficult to support the judgment, counsel for respondents 2 to 6 seeks leave to withdraw the writ petition filed in the High Court. We accord leave prayed for.

4. The learned Attorney-General with his usual fairness, makes a statement that in view of the recommendation of the Regional Deputy Director of Education, Patna Division, Patna, conveyed by her letter dated February 17, 1978, to the Director (School Education), Bihar, the State Government will consider the feasibility of taking over the Middle School, Bela by the issue of a notification under sub-section (3) of Section 3 of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 and the question of absorption of respondents 2 to 6 as teachers of the schools subject to their satisfying the requisite qualifications for such absorption.

5. Accordingly, the appeal succeeds and is allowed. The judgment of the High Court is set aside and the writ petition filed by the respondents is dismissed as withdrawn. There shall be no order as to costs.

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