

State of Bihar

Vs

Jaianandan Prasad Singh and Others

And

State of Bihar and Others

Vs

Nandeshwar Singh and Others

Civil Appeal Nos. 1590 and 1573 of 1985

(N. D. Ojha, E. S. Vankataramiah JJ)

20.01.1989

ORDER

1. The question involved in these cases is whether the schools in question, namely Firangi Singh Middle School, Gaya and Janata Sarvodaya Madhya Vidhyalaya, Dhamdhar which were aided elementary schools have been taken over by the Government of Bihar under Section 3 of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 (hereinafter referred to as 'the Act'). Sub-section (2) of Section 3 of the Act provides that aided elementary schools, the Managing Committee 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.

2. The District Committee consists of six officers referred to in sub-section (4) of Section 3. One of the contentions of the State of Bihar, the appellant in Civil Appeal No. 1573 of 1985 is that there has not been any decision of the District Committee with regard to the feasibility of taking over of the schools in question, since no resolution has been passed by the Committee at a meeting and that there was no provision for making a recommendation by the members of the Committee individually on a file which is circulated amongst each one of them. Our attention has been drawn to the document which is marked as Annexure 4 in Civil Appeal No. 1573 of 1985. In that document it is observed thus :

"As the meeting of the District Committee is not possible to be convened in near future due to several other pressing works, the file may be sent to the members of the Committee constituted for their opinion."

No doubt the file contains the signatures of the members of the Committee but it cannot be said that there has been the decision of the Committee, since unless there is a rule to the contrary the members of the Committee had to meet and take a decision at a meeting. In the circumstances we are of the view that there is no meeting of minds of the members of the Committee on the question on which they had to take a decision. Even otherwise the reading of the said document does not

suggest that all the members were of the view that the school should be taken over. The facts of the case in Civil Appeal No. 1590 of 1985 are in no way different. Here again it is not shown that the District Committee had taken a decision at a meeting. The burden of proving that there was such a decision taken by the District Committee is on those who assert that such a decision had been taken. We, therefore, find that the proof of the condition precedent for the taking over of the school under Section 3(2) is lacking in both the cases. We cannot, therefore uphold the decisions of the High Court which had held that the schools had been taken over with effect from January 1, 1982.

3. We, therefore, set aside the orders passed by the High Court and direct the District Committee concerned to take the decision on the question whether it is feasible to take over the schools in question and if they are of the view that they should be taken over, the date from which each of the two schools should be taken over.

4. We accordingly issue a direction to the District Committee to comply with this order within eight weeks from the date of receipt of the copy of this order. If the District Committee concerned makes its recommendations, the further steps consequential thereon under the Act shall follow.

5. These appeals are accordingly disposed of.

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