

**IN THE HIGH COURT OF PATNA**

C.W.J.C. No. 2962 of 1990

Decided On: 16.09.1999

Appellants:**Sidheshwar Prasad and Ors.**

Vs.

Respondent:**State of Bihar and Ors.**

The Bihar Non-Government Elementary Schools(Taking over of control) Act, 1976 – Sec.3(4)

Writ petition seeking direction to take-over Sardar Patel madhya Vidyalaya and to pay salary and other consequential benefits.

Matter regarding takeover of the school was considered by the Director of Primary Education – As per director, school does not possess its own land and building, and it is not possible to ascertain its date of establishment.

**Held that the decision of the district committee is recommendatory and not binding on state gov in which case court cannot pass directions to the government to take over the school – High court is not justified in issuing writ of mandamus in such case.**

*State of Bihar vs. Sri Chandradip Rai; AIR 1981 SC 2017* was relied on.

Writ Petition was dismissed.

[Para 2 and 11]

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Appellants:**Sidheshwar Prasad and Ors.****Vs.**Respondent:**State of Bihar and Ors.****Hon'ble Judges/Coram:***S.N. Jha , Aftab Alam and R.M. Prasad , JJ.***JUDGMENT****S.N. Jha, J.**

**1 .** This writ petition has been filed seeking, in substance, direction to the respondents to take-over Sardar Patel Madhya Vidyalaya, Mithapur, Patna Under Section 3(4) of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976, and to pay salary and other consequential benefits to the petitioners.

**2 .** The petitioners claim to be, respectively, the Secretary, Headmaster, Assistant Teachers and Non-teaching staff of the School. When the petition came up for admission before a Bench of this Court on 27-11-90, reliance was placed on orders whereby direction had been issued for takeover of the schools. The Bench considered it desirable that the question as to whether such a direction can be issued by the High Court be authoritatively decided by a Special Bench in the light of the decision of the Supreme Court in *State of Bihar v. Shri Chandradip Rai* MANU/SC/0090/1981 : AIR1981SC2071 , and accordingly directed the records of the case to be placed before the Hon'ble Chief Justice for constituting a Special Bench. That is how the case has been listed before this Bench.

**3 .** The Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 ('the Act', for short), has been enacted to provide for the taking over of non-Government elementary schools under the State control for better organisation and development of elementary education in the State of Bihar. "Elementary school" has been defined under Section 2 (a) of the Act to mean a school of grades up to class OVII including (i) a school established and administered by the District Board and Zila Parishad under the provisions of the Bihar and Orissa Local Self-Government Act 1885, (ii) a school established and administered by the Municipal Board Under the provisions of Bihar and Orissa Municipal Act, 1922 and (iii) and School established and administered by the Patna Municipal Corporation Act, 1951. Section 3(1) of the Act provides for deemed takeover of all such schools managed by the District Board, Zila Parishad, Municipal Board and Patna Municipal Corporation with effect from 1-1-1971.

Apart from the above, the Act also provide for take over of the aided elementary schools and such elementary schools which are administered by any Public or Private undertaking. Different modes and procedure, however, have been laid down for take-

over of such schools.

**4.** It would be useful at this stage to quote the entire Section 3 of the Act as hereunder:

**3 .** Taking over of Non-Government Elementary schools by the State Government-(1) Elementary schools managed by the District Board, Zila Parishad, the Municipal Board and the Patna Municipal Corporation and those opened under the Expansion and Improvement Scheme shall be deemed to have been taken over by the State Government with effect from the 1st day of January, 1971.

(2) Aided Elementary schools, 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.

(4) (a) with regard to the taking over of elementary schools other than those mentioned in Sub-sections (1) and (3) there shall be a District Committee in each District which shall examine the feasibility of taking over of such schools by the State Government and which shall consist of the following member:

(i) Deputy Development Commissioner/Administrator, District Board-Chairman.

(ii) District Superintendent of Education-Secretary Members:

(iii) District Education Officer,

(iv) District Inspector of schools,

(v) Sub-Divisional Education Officer of the concerned sub-division,  
and

(iv) Deputy Inspector of schools concerned

(b) The State Government may, from time to time make changes in the personnel of the District Committees so constituted.

**5.** It may be mentioned here that "aided elementary school" has been defined under Section 2 (c) of the Act to mean a private school which is administered by a managing Committee and which has been in receipt of Government grant prior to its being taken over by the State Government. The term "unaided Elementary School" has been defined under Section 2 (d) of the Act to mean a private school recognised by the Government and which is not in receipt of any Government grant.

**6.** It would appear that while Section 3 (2) of the Act refers to "aided elementary schools" Section 3(4) of the Act refers to elementary schools" other than those mentioned in Sub-sections (1) & (3)". In other words, although Section 3(2) relates

to only aided elementary schools, by virtue of provisions of Section 3(4) the same procedure is to be followed in the matter to take-over of unaided elementary schools. The Legislature was cognizant of the distinction between aided elementary schools and unaided elementary schools, and therefore, the expression "elementary schools other than those mentioned in Sub-sections (1) & (3)" must be interpreted as including unaided elementary schools as well. If the Legislature had intended otherwise, under Section 3(4) of the Act, it would have mentioned "aided elementary schools" and not "elementary schools other than those mentioned in Sub-sections (1) & (3)". According to me, it is thus obvious that in the matter of take-over of both types of schools namely, aided and unaided elementary schools, the same procedure as laid down under Section 3(4) is to be followed.

**7.** It would also appear from the aforequoted provisions that Section 3 of the Act envisages different manner of take-over with respect to different categories of elementary schools. While schools established and administered by Local Bodies, such as the District Board, Zila Parishad, the Municipal Board and the Patna Municipal Corporation, and those opened under the Expansion and Improvement Scheme stand automatically taken-over with effect from 1-1-1971, and the schools administered by any public or private undertaking may be taken over by notification to be published in the official Gazette with effect from the specified date, other types of schools not falling under any of the said categories can be taken over in accordance with the procedure laid down in Sub-section (4), Sub-section (4) envisages A District Committee for each district, consisting of the Deputy Development Commissioner/ Administrator, District Board as the Chairman and District Superintendent of Education, District Education Officer, District Inspector of Schools, Sub-Divisional Education Officer and the Deputy Inspector of schools of the concerned districts/ sub-divisions as its members. The State Government is empowered to make changes in the composition of the Committee.

**8.** A conjoint reading of Sub-sections (2) and (4) of Section 3 makes it clear that the aim and object, as indeed the only function, of the District Committee is to examine the feasibility of the take-over and determine the effective date of take-over. After the District Committee submits the report, it is for the State Government to take the final decision.

**9.** According to the petitioners once the District Committee comes to a favourable conclusion after examining the feasibility of the particular school, as in the present case, the school will be deemed to be taken over by the State Government and the only discretion left to the State to fix a particular date for such take-over.

**10.** In *Ramnath Ram v. State of Bihar* 1995 (1) PLJR 359 a similar argument was made that the decision of the District Committee tantamounts to take-over of the school: The argument was rejected holding that District Committee is merely a recommending body and the power to examine the feasibility does not tantamount to the authority to take-over. The Court observed that in view of the words "shall be taken over by the State Government" occurring in Section 3(2) of the Act, it is difficult to hold that no further Act is required to be performed by the State Government to complete the process of take-over. The absence of words "publication on notification in the official Gazette" cannot be construed as abdication of power to the State Government or delegation of the power to the Committee. In *Rajendra Prasad Sinha v. State of Bihar* MANU/BH/0178/1990 : 1991 (1) PLJR 412, it has been held that the Act does not contain any provision for takeover to the elementary schools other than those mentioned in Sub-sections (1), (2) and (3) of Section 3.

The power of the State Government in the matter of take-over of school is an executive power which can be exercised by the Government alone. It is not competent for the Courts including the High Court in exercise of its writ jurisdiction to direct takeover of the school. The High Court can at best, in a appropriate case, merely direct the Government to re-consider the matter.

**11.** In the present case, it would appear that the matter regarding takeover of the school was considered by the Director of Primary Education on the basis of representation which the petitioners had filed in the light of the order of this Court in C.W.J.C. No. 4228 of 1989. The Director came to the conclusion, inter alia, that the school does not possess its own land and building and it is not possible to ascertain the date of its establishment. In view of my conclusion that the decision of the District Committee is merely recommendatory in nature and not binding on the State Government, if the competent authority of the Government has taken an adverse view of the matter, regarding the feasibility of the proposal of take-over, it would not be possible for this Court to issue any direction to take over the school merely on the basis of the decision of the District Committee, or to issue any direction for payment of salary and other consequential benefits to the petitioners. In *State of Bihar v. Sri Chandradip Rai* (supra), the Supreme Court has categorically held that where the school has not been taken over by notification under Section 4(2) of the Act regarding payment of salary and other conditions of service of teachers and non-teaching staff of the school do not ensue, and the persons concerned therefore, are not entitled to such benefits. The High Court in such a case would not be justified in issuing writ of mandamus directing the State Government to take steps either for proper management of the school or for payment of the salary to them.

**12.** The claim of the petitioners for take-over of the school has been rejected by reasoned order, the order not being without jurisdiction and the ground of rejection not being extraneous, I find myself unable to make any positive order in their favour.

**13.** In these premises, I would dismiss this writ petition but without any order as to costs.

**Aftab Alam, J.**

**14.** I agree.

**R.M. Prasad, J.**

**15.** I agree.