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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C.No. 154~~56~~ of 2013.

Managing Committee of Atma Samarpan Middle

School Bhokraha.

... Petitioner.

Versus

The State of Bihar and others ... Respondents.

**Subject : Reply on behalf of the petitioner
to the Counter Affidavit filed on
behalf of Respondent No.5.**

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1. Reply on behalf of the
Petitioner to Counter
Affidavit filed by Respondent
No.5.

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GOVT OF BIHAR
REGISTRATION EXCISE & PROHIBITION DEPT
PATNA SCORE PATNA

COURT FEE

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Authorization No. 2675



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Abhay Kumar
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IN THE HIGH COURT OF JUDICATURE AT PATNA

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C.W.J.C.No. 154⁵⁶ of 2013.

Managing Committee of Atma Samarpan Middle
School Bhokraha. ... Petitioner.

Versus

The State of Bihar and others ... Respondents.

Reply on behalf of the petitioner to the
Counter Affidavit filed on behalf of Respondent
No.5.


I, Ramesh Jha, aged about 73 years, son of late
Raghunath Jha, resident of village sihpur, Police
Station Kumarkhand, District Madhepura, do
hereby solemnly affirm and state as follows:-

1. That I am petitioner in this case and as such am fully acquainted with the facts and circumstances of the case.

2. That before adverting to giving parawise reply to the statement made in the Counter Affidavit of Respondent No. 5, the petitioner begs to set forth herein the salient features and indisputable facts of the instant case.
 - (i) Admittedly, the present school is an exceptional one established following the surrender of the Naxal extremists of the area before the Government with an assurance by the latter that all necessary steps for upliftment of the children of the have-nots in the area shall be taken

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by the Government. It is gratifying that much after the year 1993, the Government by its Notification bearing Memo No. 2033 dated 28.8.1998 accorded approval to it treating it to be special class which was not to be cited a precedent for other schools to follow (Annexure - 16 page 53 of the writ petition). The Notification followed the decision at the highest level of the Government as is evident from page 51 of the writ petition;

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- (ii) Sincere efforts emanated from the Government level (Annexure-2 dated 2.6.1994) for the full-fledged recommendation, approval and

according all facilities to the present school which was followed by incessant recommendation of the authorities at the local level to the District level and at the level of Commissioner of the Division as well;

(iii) It was also approved by the executive committee and planning committee of the District Madhepura vide Annexure-8 facilitating approval to the school and all facilities to its student;

(iv) It is evident from Annexure -28, page 75 at pages 80, 81 and 82 that in view of the special status of the present school were the residential

hostel of the student has been constructed at the cost of Rs.1,14,00,000/- with electrification etc. and as such it was being seriously considered at the level of the Government to complete the process of approval with all financial aids. The decision having been taken at the level of the Government formal publication of Notification was awaited;

- (v) It is, thus, evident that there is no question of any prohibition order of the Government way back in the year 1993 from taking over any school. For the present school all the steps of its taking over from

local to the Government level have been taken after 1993 itself.

(vi) It appears that the respondent is not aware of the factual and actual position of the Government Notification of the year 1993 whose copy has not been annexed even with the Counter Affidavit;

(vii) In order to verify and test the stand of the respondent, the petitioner applied under the Right to Information Act before the concerned authorities of the Government on 1.9.13 before the Deputy Director, Primary Education, Public Information Officer, Primary Education but no reply was given

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thereto. Accordingly the petitioner filed appeal before the Director, Primary Education requesting him to make available the resolution or Notification or decision of the Government of the year 1993, if any, on 21.1.14. No reply has been given thereto also. Eventually the petitioner has applied before the State Information Commission on 3.3.14 but of no avail. The petitioner requests this Hon'ble Court to direct the respondents to produce a copy of such order of the year 1993 for its consideration.

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3. That it is respectfully submitted that the decision of the Government, if any, of the

year 1993 is per se unreasonable, arbitrary and unjust as there cannot be absolute and complete embargo on take over of school like the present one which fulfills all the conditions for the take over.

4. That it is gratifying to note that in view of the special location and position of the present school, the Government have already made pucca road costing about Rs.18 crores and have constructed pucca Police Station, Middle School, High School, bank and hospital in the same premises. Water tank has also been constructed at the cost of Rs.1,51,00,000/-.

5. That in any event it is respectfully submitted that even if there was some bar stipulation in some decision of the

Government of the year 1993 it cannot be made applicable to the present school under where the Government have actively been considering for according its full approval and take over.

6. That in reply to the contents of paragraph no. 3 of the Counter Affidavit it is stated and submitted that there is no such decision of the year 1993. In any event it has not been brought on the record by the respondent. It is respectfully submitted that if brought on record the Notification of the year 1993 being unreasonable and arbitrary is liable to be declared ultra vires. Right to Education is an integral part of the fundamental right and such Notification is patently arbitrary and

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violative of Articles 14 etc. of the Constitution of India. Alternatively, it is respectfully submitted that the said Notification of the year 1993, if any, will not stand in the way of take over of the present school as till the date it is under active consideration of the Government.

7. That in reply to the statement made in paragraph no. 4 of the Counter Affidavit it is respectfully submitted that the present writ petition has been filed in terms of and in light of the order dated 19.7.2013 passed by this Hon'ble Court in C.W.J.C.No. 16532 of 2007 whose necessary facts have already been disclosed in the writ petition.

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8. That in reply to the contents of paragraph nos. 5, 6, 7 and 8 of the Counter Affidavit it is submitted that as disclosed in the writ petition recommendations for take over of the present school have already been made at all levels including the level of the Government in the present case which are consistent with the requirement of Bihar Non Government Elementary School (Taking Over of Control) Act, 1976 as interpreted by this Hon'ble Court reported in A.I.R. 1999 P.L.J.R., paragraph 3, page 49.

9. That the respondent has rightly not denied the facts stated in the writ petition that at various level of the authorities as well as at the Government level the unanimous and

repeated recommendations of the authorities for taking over of the present school are already there. Respondent No. 5 has also rightly not disputed the veracity of the Counter Affidavit filed in the earlier round of litigation which has been annexed herewith as Annexure - 31.

10. That it appears that the question of take over of the present school being under active consideration of the Government is awaiting the final Notification.

11. That the contents of this reply to Counter Affidavit have been read over and explained to me in Hindi which I have fully understood and I state that the facts stated therein are true to my knowledge and



information derived from the records of the
case which I believe to be true.

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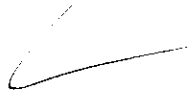
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Santeev Kumar A/c to Mr. A. N. Choubey (ADM)

R. No-1453/014

Date - 27/3/014



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R. Jha
S. K. S. A/c

27/3/14

Joint Commission
HIGH COURT