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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Letters Patent Appellate Jurisdiction)

L.P.A.No. of 2014.

(Arising out of judgment and order dated

31.03.2014 passed by Hon'ble Mr. Justice Ajay

Kumar Tripathi in C.W.J.C.No. 15456 of 2013)

In the matter of an  
application under  
clause X, Appendix E  
of the Letters Patent  
Appeal of Patna High  
Court Rules;

And

In the matter of :

Managing Committee of Atma Samarpan Middle School Bhokraha, Block Kumarkhand, District Madhepura, through the Secretary, Ramesh Jha, son of late Raghunath Jha, resident of village Sihpur, Police Station Kumarkhand, District Madhepura.

...Petitioner-Appellant.

Versus

1. The State of Bihar.
2. Secretary, Department of Education, Government of Bihar, Patna.
3. Secretary cum Commissioner, department of Welfare, Government of Bihar, Patna.
4. Commissioner, Kosi Division, Saharsa.
5. Director, Primry Education, Government of Bihar, Patna.
6. District Magistrate, Madhepura.
7. District Education Officer, Madhepura.

8. District Programme Officer, Madhepura  
Establishment.

... Respondents-Respondents.

Being aggrieved by and  
dissatisfied with the  
judgment and order  
dated 31.03.2014  
passed by Hon'ble  
Mr.Justice Ajay Kumar  
Tripathi in  
C.W.J.C.No. 15456 of  
2013, the petitioner-  
appellant begs to  
prefer this memo of  
Letters Patent Appeal,  
on, amongst others,  
the following

**Grounds:-**

- (i) For that the impugned judgment and order under appeal is bad in law and against the materials on record and is fit to be set aside.
- (ii) For that the impugned order is based on reasons of facts which is nonest.
- (iii) For that all the pre-conditions for the recommendation and take over of the present school constructed by the Government itself in the special background of this case having been fulfilled, it was mandatory to take over the school.
- (iv) That admittedly, after conditional surrender of the extremists in the area,

which was commonly known as mini Chambal, on the assurance of the Government and its officials that the school will be constructed with all infrastructure enabling the extremists and their children to join the main stream, it was imperative to take over the present school.

(v) For that the respondents themselves having established the school in 1989 after surrender of the Naxals before the then Director General of Police, it was incumbent upon the respondents to take over the school even for the benefit of the teachers.

(vi) For that the respondents cannot resile from the consistent assurances given for

taking over the school and they are bound by the principle of promissory estoppel.

- (vii) For that Naxals and their children and the people of the area have legitimate expectation of take over of the present school.
- (viii) For that it is unfounded to say that there was any decision of the Government in the year 1993 prohibiting to take over of any school in future. The decision has not been made available to the Appellant under the Right to Information Act as it is nonest.
- (ix) For that in any view of the matter, the decision, if any, of the year 1993 is unconscionable, arbitrary and

unreasonable and is violative of the right to equality and right to education contained in part III of the Constitution.

(x) For that the Government having already established the school, its hostel, pucca road, Police Station, hospital, stadium, etc. after spending several crores of rupees in the premises of the school cannot run out from their liability to make payment to the teachers of the school.

(xi) For that it is evident from the Notification of the Government bearing no. 1937 dated 21.8.1981 that the embargo envisaged under Government order no. 4206 dated 9.7.1973 is not applicable to a school established in the

special circumstances as are prevailing in the present case.

(xii) For that the respondents in their Counter Affidavit have not disputed the averment made in the writ petition that at all level namely district level at the level of the Commissioner, planning level and Government level and also it was initiated at the level of the then home Commissioner and culminated in the solemn assurance of the Government.

(xiii) For that partial take over of the school is unjust and improper.

(xiv) For that it was because of the special features of the establishment of the instant school that recommendation was



accorded to it on 28.8.1998 which is ex facie lopsided.

- (xv) For that the impugned order is based on irrelevant consideration and non consideration of the relevant submissions.
- (xvi) For that in view of the operation of the doctrine of non traverse, writ petition is fit to be allowed as indisputably at all level recommendation have been made for full take over of the school.
- (xvii) For that the respondents cannot be allowed to approbate and reprobate.
- (xviii) For that non according of take over is unjust and improper which should have

been commanded by this Hon'ble High Court.

(xix) For that it was a fit case for the exercise of jurisdiction by this Hon'ble Court EX DEBITO JUSTITIA.

(xx) For that non exercise of power is resulting in failure of justice which should be remedied on the facts and circumstances of the case.

(xxi) For that in view of the earlier Counter Affidavit of the respondents it is evident that the matter of taking over was under the active consideration of the Government which should have led to its logical conclusion.

(xxii) For that the impugned order is in teeth of the maximum SILECE POPULI EST LEX SUPREMA; "Regard for the family welfare is the supreme law".

(xxiii) For that the impugned order is otherwise bad in law as well as on facts.

It is, therefore, prayed that your Lordships may graciously be pleased to admit this Letters Patent Appeal and after hearing the parties be pleased to allow it by setting aside the impugned judgment and order by directing the

respondents to  
complete the process  
of take over of the  
school.

And/or

Be pleased to pass  
such other order or  
orders as this Hon'ble  
Court may deem fit  
and proper in the facts  
and circumstances of  
the case for the ends  
of justice.

And for this the petitioner-appellant shall ever  
pray.

Certificate

Certified that the grounds set forth are good grounds for the appeal.

Further certified that the matter out of which this appeal arises, never came before this Hon'ble High Court.

My instruction is that no notice as per Order 27A, Rule 1 of the Code of Civil Procedure is required to be served either on the Attorney General of India or on the Advocate General, Bihar.

Advocate.

# IN THE HIGH COURT OF JUDICATURE AT PATNA

(Letters Patent Appellate Jurisdiction)

L.P.A.No.                      OF 2014.

Managing Committee of Atma Samarpan Middle School  
Bhokraha,  
District Madhepura.

Petitioner-Appellant

Versus

The State of Bihar and Others

Respondents.

## SYNOPSIS

That this writ application's being filed for issuance of an appropriate writ including certiorari to quash the Departmental Committee dated 9.6.08 and the press relies issued by the respondent Director dated 29.4.10 due to which the financial benefits have not been extended to the petitioner's school which is a school of special category, which was been recognize in extra ordinary situation having no precedence.

This writ application is also being field for direction to the respondents to extend financial benefits to the petitioner school, where Government have made expenditure in crore.

This writ is also being filed for other relief as well.

ii.

The school is situated in region of Naxal activists. The criminals agree to surrender on 19.1.89. Subject to the condition that the Administration shall established school for children of the village including the children of the criminals.

The then Director General of police Sri J.M. Kuraisi assure that the school shall be established, on the said date and was named Atma Samarpan Middle School Bhokraha proposal was initiated at the Directorate level, at the instance of letter dated 2.6.94 of the Home Secretary of the State.

After completing the process including inspection etc and considering the Majority of Schedule Cast community, the School got recognition vide notification issued by the department of secondary of Adult Education contained in notification Memo No. 2033 dated 28.8.08, where by recognition was extended to the school, but without finance.

It is, further relevant to state here that the financial benefits were not extended, the school enjoy all benefits, that is mid day meal, free books, and dress etc. This a part Hostel for the students was also constructed and huge expenditure were

iii.

made to connect the school through R.C.C. road making huge expenditure for the school. The school has been pressing grievances for financial benefits and such inspections have been made. However no decision has been taken regard to financial benefits where upon the local M.L.A. raised the issue before the legislative assembly, where upon the Hon'ble Minister inform that the school shall be included in the list of 15000 schools erroneously, which is contrary to the notification dated 28.8.98.

The petitioner moved before this Hon'ble Court in C.W.J.C.No.16532/07. Where in the claim of the petitioner have been negated by the respondents on the ground of the impugned orders where by communiqué has been issued that the Government has resolved in the year 1993, not to take over any school in the year 1992. Though the case of the petitioner is 1989 is not a General case rather in exceptional circumstances. Moreover at the relevant time recognition has been extended without financial liabilities.



iv.

**Date of Events.**

**2.6.94.**

**Ann.2:-**

Letter issued by Home Secretary vide letter no. 352 to the Director Primary Education Bihar Patna.

**6.7.94.**

**Ann.3:-**

Letter issued by Deputy Education Director Primary Education Bihar Director the District Superintendent of Education Madhepura.

**4.11.94.**

**Ann.4:-**

Letter issued by Deputy Education Director Primary Education Bihar again sent a reminder to D.S.E. Madhepura.

**12.6.95.**

**Ann.5:-**

Letter issued by Deputy Director Primary Education Bihar Patna.

**2.9.95:-**

Letter issued by Deputy Director Primary Education Bihar Patna.

**19.9.95.**

**Ann.6:-**

Letter issued by District Magistrate Madhepura so Director Primary Education Bihar, Patna.

v.

19.10.95 & 17.11.95:- Letter issued by Deputy Director  
Primary Education Bihar Patna to D.S.E.  
Madhepura.

Ann.8:- Resolution issued by Government Bihar Patna.

29.12.05.

Ann.9:- Letter issued by District Magistrate Madhepura.

7.2.96.

Ann.10:- Letter issued by District Magistrate Madhepura so  
Commissioner cum Secretary Department of  
Welfare Government of Bihar Patna.

19.2.96.

Ann.11:- Letter issued by R.D.D.E. Koshi Division Saharsa to  
D.S.E. Madhepura.

18.4.96.

Ann.13:- Letter issued by D.S.E. Madhepura so R.D.D.E.  
Koshi Division Saharsa.

26.4.96.

Ann.12:- Letter issued by Deputy Director Primary Education  
Bihar Patna so D.S.E. Madhepura.

15.2.97.

Ann.15:- Letter issued by Commissioner Koshi Division  
Saharsa addressed to the Director Primary  
Education Bihar, Patna.

**Ann.16:-** Hon'ble Minister of Education Bihar Patna has also pleased to given order to the Secretary of Primary Education Bihar, Patna.

**28.8.98.**

**Ann.17:-** Circular issued by Department of Secondary Primary and Adult Education Government of Bihar vide Circular no. 2033.

**21.7.99.**

**Ann.18:-** Letter issued by Director Department of Welfare so the D.D.C. Madhepura.

**27.11.01.**

**Ann.21:-** Letter issued by District Magistrate Madhepura.

**26.12.01.**

**Ann.22:-** Order issued by District Magistrate Madhepura.

**30.7.02.**

**Ann.23:-** Letter issued by District Magistrate Madhepura to the Director Primary Education Bihar, Patna.

**30.9.02.**

**Ann.24:-** District Magistrate Madhepura Letter issued to the Commissioner Department of Welfare Bihar, Patna.

vii.

13.3.03.

Ann.25:-

Letter issued by Commissioner cum Secretary  
Department of Welfare to Accountant General Bihar  
and Jharkhand.

18.6.04.

Ann.26:-

Order passed by District Working Committee (Sarva  
Shiksha).

18.8.04.

Ann.29:-

Letter issued by D.D.C. Madhepura.

22.12.05.

Ann.27:-

Letter issued by D.S.E. Madhepura.

17.2.06.

Ann.20:-

Letter issued by D.S.E. Madhepura.

12.5.06.

Ann.28:-

Department Welfare issued a letter to Deputy  
Secretary Department of Secondary Primary and  
Adult Education.

6.3.07.

Ann.30:-

Proceeding of the Bihar legislative assembly.

9.6.08:-

Press release.

29.4.10:-

Press release.

11.4.11.

Ann.32:-

Letter issued by Deputy Director Primary Education

Vide letter no. 536.

**15.4.11.**  
**Ann.33:-**

Letter issued by D.S.E. Madhepura vide letter no.

461.

**31.3.14**

Order passed in C.W.J.C.No. 15456/2013 hnace this L.P.A,

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**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15456 of 2013**

Managing Committee of Atma Samarpan Middle School Bhokraha, Block Kumarkhand, Distt. Madhepura, through the Secretary, Ramesh Jha, son of Late Raghunath Jha, resident of Village - Sihpur, P.S. Kumarkhand, Distt. Madhepura

..... Petitioner/s

Versus

1. The State of Bihar
2. Secretary, Department of Education, Govt. of Bihar, Patna
3. Secretary cum Commissioner, Department of Welfare, Govt. of Bihar, Patna
4. Commissioner, Kosi Division, Saran
5. Director, Primary Education, Govt. of Bihar, Patna
6. District Magistrate, Madhepura
7. District Education Officer, Madhepura
8. District Programme Officer, Madhepura Establishment

..... Respondent/s

**Appearance :**

For the Petitioner/s

Mr. K. Choubey, Sr. Advocate

Mr. Ram Bahadur Jha

For the Respondent/s

Mr. Sanjeev Kumar, AC to SC 30

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**ORAL ORDER**

4 31-03-2014

One to many efforts have been made by the petitioner to beget recognition and fund from the State for the present school which was set up privately. There are various documents which have been brought on record from which it is evident that effort of the petitioner was not limited to the State Government but also at political level which did not beget him recognition to the

GOVT OF BIHAR  
 REGISTRATION EXCISE & PROVISION DEPT  
 PATNA SCORE PATNA

ISSUED TO: **0000003**  
 COURT FEE: **375459**  
 AUTHORIZATION NO: **375459**

Patna High Court  
 IM JA  
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do not bring the petitioner's case within the ambit of take over. Having failed on all fronts now he wants the Court to do what is required to be decided as a matter of policy, by the State.

Take over of the private institution is not a fundamental or constitutional right of the petitioner. These are governed by a set of laws as well as the requirements which are required to be fulfilled by any institution looking for its benefit. Many institutions were set up for oblique purpose and ultimately they were dumped on the State creating obligation and expenses from the public exchequer. The State Government therefore notified what is known as Bihar Non-Government Elementary Schools (Taking over of Control) Act, 1976.

A detailed counter affidavit on behalf of the respondents has been filed. They do not accept the assertions made on behalf of the petitioner with regard to the obligation of the State to take over each institution. They have categorically stated that they have not found any reason with regard to the institution for taking over within the ambit of the Act.

This Court, therefore, is not inclined to issue any mandamus in favour of the petitioner. However, if the petitioner can persuade the government and make out a case for take over, within the

established from the pleadings as well as the materials in the prevalent rules. Even otherwise such decision will also come within the ambit of a policy decision as well where court may not have a role at this stage.

Writ has no merit. It is dismissed.

*sd/-*  
Ajay Kumar Tripathi, J)

R.K.Pathak/ sk

CERTIFIED TO BE TRUE PHOTO COPY

For Joint Registrar  
Patna High Court  
Authorised Under Section 1 of 1872

*AK Singh*  
03.4.14  
Rakesh Kumar  
A.S.O.  
03/04/2014  
93/09/19V3E

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son of late Raghunath Jha, resident of village

Sihpur, Police Station Kumarkhand, District  
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...Petitioner-Appellant.

Versus

1. The State of Bihar.
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Establishment.

... Respondents-Respondents.