

**(2003) 12 JH CK 0027**

**Jharkhand High Court**

**Case No:** Writ Petition (PIL) No. 3988 of 2002

Parash Nath Sharma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision:** Dec. 10, 2003

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 30

**Citation:** (2004) 3 JCR 210

**Hon'ble Judges:** P.K. Balasubramanyan, C.J; Tapen Sen, J

**Bench:** Division Bench

**Advocate:** Ajit Kumar and M.K. Sinha, for the Appellant; V. Shivnath, for Respondent No. 7, M. Tondon, for Respondent No. 9, S.P. Sinha, for Respondent Nos. 8 and 10 and B.S. Lal, A.A.G., for the Respondent

**Final Decision:** Allowed

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**Judgement**

1. This writ petition is filed by a parent of two students studying in D.A.V. High School, Dhanbad. The petitioner has approached this Court praying for a declaration that the school is not a minority institution entitled to protection under Article 30(1) of the Constitution of India, for a direction to the State Government to take over the management of the school and for the appointment of an independent Committee to look into the affairs of the institution and to suggest remedial measures. The writ petition is filed in the back ground of the disputes between the groups represented by respondents 7 and 9 on the one hand and 8 and 10 on the other. The respective sets of respondents claim to be the true representatives of the Managing Committee of the educational institution. According to the petitioner internecine quarrels have reached such a proportion that even proper classes are not being held for the students and the students are being exploited. Two sets of teachers are being appointed and the, teachers prevent each other from taking classes. The funds received from the Government are misused. There has been no audit of the accounts of the institution for a long number of years. The petitioner further

submits that though in the year 1958 an order was issued by the then Government of Bihar that the institution was a minority institution, it was not really a minority institution since it was not established and administered by the Arya Samaj, even though substantial help has been rendered by the Arya Samaj. Even otherwise, going by the ratio of the decisions of the Supreme Court, even if the school was established by the Arya Samaj and was being administered by it, it could not be a minority institution in the State of Bihar and especially in Dhanbad and hence, the Government could exercise control over its administration and there no effort was being made by the Government or the concerned educational authority, to rectify the running of the school or to interfere effectively in the quarrel between the groups. This has led to the students suffering the consequences. The Library containing valuable books was being misused. The books are disappearing. The students were not using the Library. It is in this context that the parent has approached this Court with the writ petition.

2. Before proceeding further, we may note here that the institution is a Society registered under the Societies Registration Act, 1860.

3. Though the two sets of respondents 7 and 9 on the one hand and 8 and 10 on the other have filed counter affidavits neither of them has accepted that the institution was one established by Arya Samaj. At best what is pleaded in the counter affidavits like that found in paragraph 23 of the counter affidavit filed on behalf of respondents 7 and 9 is that buildings have been constructed and funds have been provided by the Arya Samaj and substantial financial help has been rendered by the Arya Samaj. Even otherwise going by the decisions of the Supreme Court in [N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another](#), ; [D.A.V. College, Bhatinda, etc. Vs. The State of Punjab and Others](#), ; and [D.A.V. College, Jullundur v. State of Punjab AIR 1971 SC 1937](#), it is clear that the school, even if established by Arya Samaj which is merely a part of the Hindu religion, cannot be held to be an institution established by a minority community so as to qualify for protection under Article 30 of the Constitution of India. At this stage, we must take note of the fact that, in the year 1958 the State Government had declared that the institution is a minority institution but, this cannot prevent the Court on considering the relevant materials from declaring that the institution is not a minority institution and to proceed on that basis. Therefore, notwithstanding the order said to have been passed by the Government of Bihar in the year 1958, we are satisfied that the institution in question is not a minority institution. We, therefore, grant the declaration prayed for by the petitioner that the institution is not a minority institution.

4. In the elaborate counter affidavits filed on behalf of respondents 7 and 9 on the one hand and respondents 8 and 10 on the other, there is no denial of the allegation that the two groups are fighting with each other over the management of the school, there is also no denial of the assertions that two sets of teachers are fighting

with each other and some teachers are even preventing the teachers appointed by the rival Managing Committee from taking classes. There is also no denial of the allegation that the accounts of the school have not been audited for a number of years.

5. This Court, when approached in such a situation by a parent of two students of the school, has a duty to intervene and try to set the matters right. This larger duty cast on the Court transcends any question of jurisdiction. In public interest and in the interests of the institution, it behooves the Court to find solution when confronted with such maladministration of an educational institution which serves a public purpose and which is intended to be for the benefit of common man. In that view, accepting the role of a guardian of such rights, we are satisfied that an active intervention by this Court is not only justified but is also warranted. In that view, we think that the first requirement is to have a proper Managing Committee constituted for the school in terms of the By-laws of the Society that is registered under the Societies Registration Act, 1860. Until such constitution of a proper Committee, it is also necessary to ensure proper management of the school and to prevent the abuses that have crept in, in matters of administration of the institution. Under the Bihar Non-Government Secondary School (Taking over of Management and Control) Act, 1981 as amended in the year 1987, the Government, in a given situation, can intervene and take over the control of the school. Taking note of this aspect also, we think that the proper course to adopt is to appoint the Deputy Commissioner as receiver to be in management of the school, until a proper Committee is elected for running the affairs of the school. In that view. We appoint the Deputy Commissioner of Dhanbad as the receiver of the educational institution in question. He will take over as receiver on receipt of a copy of this order from this Court. We trust that he will manage its affairs with total commitment and proper circumspection.

6. After taking over as a receiver of the school, the Deputy Commissioner will look into the relevant by-laws, the membership register and other relevant records and call for a general body meeting of the members of the Society for the purpose of electing the Managing Committee in terms of the by-laws. After such election is completed and the Managing Committee formed along with its office bearers as contemplated by the by-laws, the District Collector will report this fact to this Court. After getting the approval from this Court, the District Collector will hand over the management of the educational institution to the Committee so constituted. Until he so hands over the management of the school to the newly elected Committee, the Deputy Commissioner will continue his management as a receiver of the school.

7. We trust that Deputy Commissioner will play an active role in the interests of the education and in the interests of the pupils attending that school and ensure that the anomalies are put down with a firm hand and necessary steps are taken to put the administration of the school back on its feet.

8. This writ petition is thus allowed with the above directions. The Registry will send a copy, of this order to the Deputy Commissioner, Dhanbad immediately for compliance.