

**(1995) 04 PAT CK 0036**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 1203 of 1983

Principal, Carmel Convent School

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** April 6, 1995

**Acts Referred:**

- Bihar Municipal Act, 1922 - Section 84(3)

**Citation:** (1995) 2 PLJR 458

**Hon'ble Judges:** S.N. Jha, J

**Bench:** Single Bench

**Advocate:** Roy Shivji Nath and Sudhir Kumar Raj, for the Appellant; None, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

S.N. Jha, J.

The Petitioner, Principal of Carmel Convent School, Madhupur, has challenged the validity of the order of the State Government in the Urban Development and Housing Department contained in Annexure-7 directing the Deputy Commissioner, Santhal Parganas, to recover the municipal taxes with effect from 1973-74 on the ground that the school is not a charitable institution.

2. Chapter IV of the Bihar Municipal Act, 1922, contains the provisions regarding imposition of taxes under various heads by the municipality. Section 84(3) confers powers upon the State Government to exempt any holding or part of holding, which is used exclusively for any charitable purpose. The school was, accordingly, granted exemption by order of the State Government dated 19th June 1963. The decision was reiterated on 1st October, 1975 when the school made certain additions to the building. The school continued to enjoy the benefit of exemption in this manner until the impugned order was passed in February, 1983.

3. The order has been challenged on two grounds-(a) No recommendation was made by the Commissioners of the municipality in regard to withdrawal of the exemption, and (b) No opportunity of hearing was provided before the impugned order was passed. In my opinion, the writ petition is entitled to succeed on both the grounds.

4. Sub-section (3) of Section 84 of the Act provides:

The State Government may on the recommendation of the Commissioners at a meeting exempt any holding or part of a holding which is used exclusively for any charitable purpose.

It would, thus, appear that the manner of granting exemption has been specified in the statute that the exemption will be granted if the Commissioners of the municipality pass a resolution and recommend to the Government that such exemption be granted. It is true that there is no specific provision in the Act laying down the manner in which the exemption granted from before will be withdrawn or cancelled but, in my view, if the statute prescribes the procedure for granting exemption the same procedure should be followed for withdrawing it. The impugned order does not show that the State Government acted on the basis of any such recommendation of the municipality.

5. The Petitioner has averred in the writ petition at more than one place that opportunity of hearing was not provided. There can be no doubt that the exemption from payment of taxes confers certain benefits upon the Assessee which cannot be taken away except without giving opportunity of hearing. That having not been done, the order is liable to be quashed on that ground alone.

6. In the result, this writ petition is allowed. The order as contained in Annexure-7 is quashed. Annexure-8, which is the consequential order is also quashed. It will be open to the State Government to pass an appropriate order, should the facts so warrant, in accordance with law. No cost.