

Government of Bihar

Law Department



**The Bihar Non-Government Secondary Schools (Taking over of
management and control) Ordinance, 1980.**



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(Taking over of management and control) Ordinance, 1980**

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Sub. National Systems Unit,
National Institute of Educational
Planning and Administration
17-B, SriAurobindo Marg, New Delhi-110016
DOC. No.....D-594.....
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(Bihar Ordinance No. 146 of 1980)

**The Bihar Non-Government Secondary Schools
(Taking over of management and control) Ordinance, 1980.**

AN

ORDINANCE

TO PROVIDE FOR THE TAKING OVER OF MANAGEMENT AND CONTROL OF THE NON-GOVERNMENT SECONDARY SCHOOLS BY THE STATE GOVERNMENT, FOR IMPROVEMENT, BETTER ORGANISATION AND DEVELOPMENT OF SECONDARY EDUCATION IN THE STATE OF BIHAR;

Preamble—Whereas, the legislature of the State of Bihar is not in session;

And, whereas, the Governor of Bihar is satisfied that circumstances exist which render it necessary for him to take immediate action for the taking over of the management and control of the Non-Government Secondary Schools by the State Government for improvement, better organisation and development of Secondary Education in the State of Bihar;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the constitution of India, the Governor is pleased to promulgate the following ordinance :—

CHAPTER--1

1. Short title, extent and commencement :

- (1) This ordinance may be called the Bihar Non-Government Secondary Schools (Taking over of management and control) ordinance, 1980.
- (2) It shall extend to the whole of the State of Bihar.
- (3) It shall come into force atonce except section-3.

2. Definition : In this ordinance, unless there is anything repugnant in the subject or context :-

- (a) "Non-Government Secondary School" means a Secondary School recognised as such by the Bihar Secondary Education Board, constituted under Bihar Secondary Education Board Act, 1976 (Bihar Act No. 25 of 1976) and the Bihar Secondary Education Board (second amendment) ordinance, 1980 (Bihar Ordinance No. 82 of 1980)
- (b) "Secondary School" means a secondary school whose management and control has been taken over by the State Government under section 3 of the ordinance,
- (c) "Minority Secondary School" means a Secondary School which has been established by a minority community based either on religion or language, and which is managed by the minority community and has been declared and recognised as minority school by the State Government.
- (d) "Proprietary Secondary School" means a Secondary School the entire financial burden of which is borne by a Trust, Association or a Corporate body and which is recognised and declared a proprietary school on such terms and conditions as laid down by the State Government from time to time.
- (e) "Centrally sponsored Secondary School" means a secondary school established or managed by Government of India, or an undertaking either owned or controlled by Government of India, or by any department of State Government other than Education Department imparting Secondary Education, and recognised by the Education Department of the State Government.
- (f) "Autonomous Secondary School" means a residential school recognized by the State Government which imparts Secondary Education in accordance with the curriculum prescribed for the Secondary Schools, distinguishes in curricular and co-curricular activities and functions under the rules approved by the State Government.
- (g) "Headmaster" means the head of the teaching staff of a natio-

- nalised secondary school by whatever name designated;
- (h) "Teacher" means the teacher of a nationalised Secondary School;
 - (i) "Non-Teaching Staff" means the whole time staff of a nationalised secondary school, other than the teachers;
 - (j) "Director" means the Director of Education of State Government, in charge of Secondary Education;
 - (k) "Prescribed" means prescribed by the ordinance or the rules framed thereunder ;
 - (l) "Rules" means rules framed under section 15 of this ordinance; and
 - (m) "District Secondary Education Development Fund" means a fund constituted at every district Headquarters in which all sums received for the purpose of secondary school Education from the State Government or Government of India or from any other sources and all sums received as donation, subscription, endowment, fees and gift for the purpose of development and improvement of secondary education in the district shall be deposited.

CHAPTER-2

3. Taking over of the management and control :

Taking over of the management and control of Non-Government secondary schools by the state government :

- (1) All non-government secondary schools other than the minority secondary schools based on religion or language declared as such by the State Government and Centrally sponsored, autonomous and proprietary secondary schools recognised by the State Government, recognised permanently, provisionally or partially by the Board of Secondary Education under the Bihar Secondary Education Board Act, 1976 (Bihar Act 25 of 1976) and the Bihar Secondary Education Board (Second amendment) Ordinance, 1980 (Bihar Ordinance No. 82 of 1980) shall, notwithstanding, anything contained in the said Act or the said ordinance, be deemed to have been taken over by the State Government with effect from the 2nd October, 1980.

- (2) The State Government may, by notification in the official gazettee from a specified date, take over the management and control of such recognised minority or proprietary or autonomous secondary schools, the managing committee, trust, association or corporate body of which voluntarily makes an unconditional offer to make over the schools with all moveable or immoveable assets and properties owned or possessed by the school which include land, building, documents, books and registers also. The State Government may lay down its conditions for taking over management and control of schools, and before making over the management and control it shall be binding for the managing committee, trust, association or corporate body of the said schools, to comply with and carry out the said conditions and it shall be valid.
- (3) The State Government may, by notification in the official gazette take over the management and control of such schools and on such terms and conditions as the government may deem proper, which have already received permission of establishment from the Bihar Secondary Education Board or of such schools imparting Secondary Education which have applied for permission of establishment to the said Board immediately before the date of promulgation of this ordinance and the utility of such school is proved in the eye of the government and which fulfil within 3 years of the promulgation of the ordinance, the conditions laid down by the State Government with regard to land, building, furniture, equipments and enrolment.

The qualification and suitability of teachers working against 9 posts of the school, one clerk and two orderlies of such school before the promulgation of this ordinance, shall be examined by a committee constituted by the State Government for the purpose and if found suitable for appointment in government service they shall be appointed in the government service along with taking over the management and control of the school.

4. Consequences of taking over management and control :

- (1) All the moveable and immoveable assets and properties owned

and possessed by Secondary Schools taken over by the State Government under section 3 including land, building, documents, books and registers relating to the school, shall stand transferred to the state government and be deemed to have come into the possession and ownership of it.

- (2) The services of every Headmaster, teacher or other employees of the school taken over by the state government shall be deemed to have been transferred to the state government, with effect from the date of taking over of the school and become employees of the state government with such designation as the state government may determine.
- (3) The age of superannuation of Headmasters, teachers and other employees of the schools taken over by the state government shall be 58 years. The other terms and conditions of their services shall continue to be the same as it was before taking over the management and control of the school until any alteration is made therein by the state government in the prescribed manner.
- (4) The Bihar Secondary Education Board constituted under the Bihar Secondary Education Board Act 1976 (Bihar Act 25 of 1976) and the Bihar Secondary Education Board (Second amendment) Ordinance 1980 (Bihar ordinance No. 82 of 1980) shall be dissolved from the date of the promulgation of this ordinance and thus the post, tenure and appointment of the chairman shall be deemed to have expired. At the same time the members of the said Board shall vacate their respective posts.
- (5) The office of the Bihar Secondary Education Board established immediately before the promulgation of this ordinance and all its moveable and immovable assets and properties owned and possessed by the said Board including land, buildings, documents, books and registers and the posts of all officers and employees of the said Board shall be deemed to have been transferred to the State Government and the deputation of Government employees shall be deemed to have been terminated. Employees on deputation to the said Board and every officer and other employees appointed by the Board shall function under the control of the Director with such designation as the State Government may

determine. The tenure, emoluments and terms and condition of services of the officers and employees appointed by the said Board shall be the same as they were, before the dissolution of the said Board and they shall, continue to function as such unless such tenure, terms and conditions of service are altered by the State Government in the prescribed manner.

- (6) The school service commission established under the Bihar Secondary Education Board Act, 1976 (Bihar Act 25 of 1976) and the Bihar Secondary Education Board (Second amendment) Ordinance, 1980 (Bihar Ordinance No. 82 of 1980) shall be deemed to have been dissolved and the posts, tenure and appointments of the chairman and members shall be deemed to have expired with effect from the date of promulgation of this ordinance.
- (7) The office of the school service commission established immediately before the promulgation of this ordinance and all the moveable and immoveable assets and properties owned and possessed by the commission including land, building, documents, books and registers shall be deemed to have been transferred to the school service Board (hereinafter referred to as the Board) established under Section 10 of this ordinance and that office shall become the office of the Board. The posts of all officers and employees created for that office shall be deemed to have been transferred to the Board and all officers and employees appointed or deputed in the dissolved commission shall be deemed to have been appointed or deputed in the Board by such designations as may be determined and their tenure, remuneration, terms and conditions of services shall be the same as they were immediately before their transfer to the Board and shall continue to be the same unless their tenure, remuneration, terms and conditions of services are altered by the state government in consultation with the Board in the prescribed manner.

CHAPTER—3

Management of Schools

5. Management and control :

- (1) The management and control of the nationalised schools shall be

under the Director and his subordinate officers in the manner as prescribed by the State Government. The State Government shall determine the powers and functions of the Director and his subordinate officers of each category and shall have powers to give proper directions to the Director from time to time.

- (2) The State Government shall have the power to appoint an officer of the rank of Additional Director to assist the Director for smooth management and development of nationalised secondary schools. Besides 5 Regional officers of the same rank shall also be appointed for the purpose.

6. Constitution of the Managing Committee :

- (1) Subject to the provisions contained in this ordinance and rules framed thereunder and directions issued by State Government and Departmental officers from time to time, the management of every secondary school shall be under a committee. The managing committee shall consist of the following members :
 - (i) The Headmaster of the school—Ex-officio member secretary.
 - (ii) A teacher representative who shall be elected from amongst the teachers of the school under the chairmanship of the Headmaster for one academic session.
 - (iii) A Government Servant nominated in the prescribed manner.
 - (iv) One member of the Legislature or Parliament who represents or reside in the area where the school is situated, to be nominated in the prescribed manner.
 - (v) One person of the area who has made donations to the school or who has made important contribution towards the establishment and development of the school or who has interest in the development of the school, to be nominated in the prescribed manner.
- (2) The President of the Managing Committee shall be elected in the first meeting of the members from amongst themselves convened by the ex-officio secretary of the Managing Committee and who shall not be a teacher or Headmaster of the school.
- (3) The term of office of the nominated members of the committee

shall be of 5 years from the date of nomination, provided such nominated members who are nominated on the basis of representing the area or on account of holding a post shall cease to be a member from the date he loses his representative capacity or is removed from the post he held.

- (4) In case the post of members of the Managing Committee is rendered vacant owing to death, resignation, transfer or any other reason, it shall be filled up in the prescribed manner.

7. Powers and Functions of the Managing Committee :

The powers and functions of the managing committee shall be as follows :-

- (i) To control and direct the Headmaster in the working of the school in accordance with Departmental rules.
- (ii) To make recommendation for the creation of posts of teachers, ministerials and other staff of the school.
- (iii) To maintain and manage the hostel and to provide suitable residential facilities for accommodation of the students.
- (iv) To make appointment to the sanctioned posts of Superintendents or Assistant Superintendents of the hostel attached to the school.
- (v) To review the payment of scholarship sanctioned to the students of the school.
- (vi) To supervise that the teaching work in the school is being done properly and smoothly.
- (vii) To expel any student of the school on the recommendation of the Headmaster.
- (viii) To do all such work which are necessary in the interest of the school and for which it has been authorised by the State Government.

8. The principal duties of the Headmaster :

Subject to the provisions of this ordinance and rules made thereunder and instructions issued by the State Government or officers of the Department from time to time, the Headmaster shall be responsible for organising all curricular and co-curricular activities, proper

maintenance of accounts, administration, discipline and development of the school.

9. Service Conditions :

The service condition of the Headmaster, teacher and non-teaching staffs of the nationalised secondary schools shall be determined by the State Government.

10. Establishment and function of School Service Board :

- (1) The State Government shall by notification in the official gazette establish a Board to be called the School Service Board (hereinafter referred to as the Board) from a date to be appointed by the State Government.
- (2) The Board shall be a corporate body having perpetual succession and common seal and shall sue and be sued by that name.
- (3) The Board shall have a chairman and four members who shall be appointed by the State Government.
- (4) Amongst the Chairman and the members of the Board there shall be one member who possess a teaching experience of not less than 10 years in any University and one who possess administrative experience for not less than 10 years under the central or the State Government and one who have at least 10 years experience of administration and inspection of Secondary Schools under the central or the state government. Amongst the Chairman and members, there shall be one member of the Scheduled Caste or Scheduled Tribe.
- (5) The pay of the Chairman of the Board, shall be Rs. 2,500/- per month and that of the member shall be Rs. 2,250/- per month. Their other terms and conditions of service shall be as such as may be determined by the State Government.
- (6) The term of the office of the Chairman and members of the Board shall be three years from the date they take charge of their office. On expiry of the said period the State Government may extend their term but the total period of such term of office shall not exceed six years.
- (7) If the State Government is satisfied that the Chairman or any

member of the Board is incapable of working, or refuses to work or work in a manner which in the opinion of the State Government is detrimental to the interest of the Board, the State Government may, by notification in the official gazette remove the Chairman or such member from his office at any time.

Provided that before issue of such notification the State Government shall give the Chairman or Member a reasonable opportunity to show cause why he should not be removed.

- (8) The Board shall have a Secretary who shall be appointed by the State Government and who shall be a whole time officer. The pay and allowances and other conditions of his service shall be determined by the State Government.
- (9) The Board shall make recommendations for appointment of teachers and for appointment or promotion of Headmasters of nationalised secondary schools to the Director in accordance with this ordinance and the rules framed thereunder.

Provided that for promotion of teachers to the selection grade post the recommendation of the Board shall not be necessary :

Provided further that in the absence of the recommendation of the Board, and in special circumstances and in anticipation of the recommendation of the Board, the State Government shall be competent to make adhoc promotion to the post of Headmaster for a period not exceeding six months and to make adhoc appointment in the prescribed manner to the post of teachers for a period not exceeding six months :

Provided also that in the event of the death of a Government Servant during the service period, his dependent possessing requisite qualification for the post of teacher may be appointed to the post of teacher by the Director on compassionate ground on the orders of the State Government, and in such cases the recommendation of the School Service Board shall not be necessary.

- (10) The State Government may by notification in the official gazette delegate other functions to the Board with regard to appointment and promotion in this behalf.

11. District secondary education fund :

- (1) The Secondary Education Fund constituted under the repealed Bihar Secondary Education Board Act, 1976 (Bihar Act 25 of 1976) shall be deemed to have been duly constituted for the purpose of this Ordinance. The following amounts shall be credited to the said fund :—
 - (a) All sums sanctioned and to be deposited in the said fund for the purposes of secondary education by the State Government and the Central Government.
 - (b) All sums transferred to this fund by the dissolved Bihar Secondary Education Board fund for the development of secondary schools of the districts.
 - (c) All sums received in the form of donations, subscriptions, endowment and gift made for the development of Secondary education or for the development and improvement of the secondary schools.
 - (d) All amounts of fees received from students of the secondary schools of the district.
 - (e) All such sums which the State Government may direct to be credited to this fund.
- (2) The District Education fund shall be operated by the District Education Officer or any other officer authorised by the State Government in the prescribed manner.

12. Application of district education fund :

The District Education Fund may be applied for the following objects :—

- (1) Payment of salaries and allowances of the Headmasters, teachers and other staff of the secondary schools.
- (2) Payment of salary and allowances to the Headmasters, teachers and other employees of the minority secondary schools and grants for other expenditure of schools.
- (3) Expenditure on such items relating to the establishment of the secondary schools as may be approved by the State Government.
- (4) Construction, maintenance and repairs relating to secondary

schools as may be approved by the State Government or any officer authorised by the State Government.

- (5) Acquisition of such lands for secondary schools as have been approved by the State Government.
- (6) Payment of any other expenditures in connection with secondary schools which the State Government or the Director may determine from time to time.

Provided that the State Government may make payment of salaries, allowances etc. of the Headmasters, teachers and non-teaching staffs and make arrangement for office expenditure of the secondary schools from the Government Treasury by a notification in the official gazette from a date to be appointed. From the said date, payment on such items from the district secondary education fund shall cease.

13. Accounts and audit :

- (1) Within 30 days of the end of the financial year, the District Education Officer shall prepare an account of the district secondary education fund for each financial year in which shall be shown all incomes under receipt heads, establishment cost, cost on work under construction, expenditure incurred on each construction work and the balance left over at the end of the year. And a copy of the above account shall be sent to the Director.
- (2) Such account shall be open to inspection and audit by any officer of the education department or on request from the State Government to Officers of any other department.

14. Secondary education committee :

There shall be a committee consisting of the following members for making recommendation to the State Government after due consideration on the questions relating to the taking over of management of the secondary schools, their establishment, their improvement and upgradation and expansion of the secondary education and other matters relating thereto.

- | | | |
|---|----|--------------------|
| (a) Education Commissioner, Bihar | .. | Chairman. |
| (b) Special Secretary, Incharge
Secondary Education. | .. | Ex-officio-member. |

- (c) Chairman, Bihar Intermediate Education Council .. -do-
- (d) Director, Secondary Education, Bihar. .. -do-
- (e) Additional Director (Secondary Education) .. Member-Secretary.
- (f) Five Regional Officers appointed by the State Government. ... Members.

15. Power to frame rules :

- (1) The State Government may make rules not inconsistent with this Ordinance for carrying out the purposes of this Ordinance.
- (2) Every rule made under this Section shall be laid as soon as possible after it is made before each house of the State Legislature while it is in session for the total period of 14 days which may be comprised in one session or in two successive sessions, and if, before expiry of the session in which it is so laid or the session immediately following both the Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, such modification or annulment shall not affect the validity of anything previously done under the rule.

16. Power to remove difficulties :

If any difficulty arises in giving effect to the provisions of this ordinance or rules made thereunder, the State Government may take such action or pass such order as appears to it necessary for the purposes of removing the difficulties.

CHAPTER—4

17. Interim arrangement before taking over management and control :

Exercise of powers, and discharge of functions and responsibilities of the dissolved Bihar Secondary Education Board in the interim period :—

- (1) The power of the management and control of Non-Govt. Secondary Schools recognised by the Secondary Education Board under the provisions of the Bihar Secondary Education Board,

Act, 1976 (Bihar Act. 25 of 1976) and the Bihar Secondary Education Board (Second Amendment) Ordinance 1980 (Bihar Ordinance No. 82 of 1980) shall vest in the state Government until they are nationalised. The power to regulate the service conditions of the Headmasters, teachers, and non-teaching staffs of these schools, the provisions of the said Act and ordinance or rules framed thereunder or instructions issued by the State Government shall vest in the State Government. The State Government may delegate its powers under this section to the Director or to officers not below the rank of an Additional Director.

- (2) It shall be lawful for the Director, Secondary Education, Bihar to issue such instructions to the Headmaster, teachers and other employees and persons relating to administrations, control and management of these schools as he deems necessary and proper.
- (3) In this period the powers, function and responsibility of the managing committee of recognised non-Government Secondary schools shall vest in the Subdivisional Education Officer in case of boy's schools and in the District Inspectress of Schools in case of girls' school.
- (4) The Bihar Secondary Education Board fund shall continue to exist till the nationalisation of the recognised Secondary School and the Secretary or the Director or any one officer authorised by the State Government may draw the amount from the fund by cheque or by credit. The fund shall be deemed to have closed from the date the schools are nationalised and all deposited amounts on that date in the fund shall be credited to the treasury.

CHAPTER-5

18. Recognition of minority Secondary Schools :

- (1) The Schools declared a minority school under the provision of the Bihar Secondary Education Board Act, 1976 (Bihar Act 25 of 1976) and the Bihar Secondary Education Board (Second amendment) ordinance 1980 (Bihar Ordinance 82 of 1980) shall be deemed to have been recognised under the provisions of this ordinance.

- (2) The State Government may, by notification, recognise as a minority Secondary school, such Secondary school which has been established by a minority community on the basis of religion or language for the purposes of meeting the educational requirement and for the protection of culture of their section and which fulfils the prescribed condition of recognition.
- (3) The minority Secondary school accorded recognition under subsections (1) and (2) shall be managed and controlled under the following provisions :-
- (a) Every minority Secondary school shall have a managing committee registered under the societies registration Act, 1862 and shall have written by laws regarding its constitution and function.
 - (b) According to the prescribed qualification laid down by the State Government for the teachers of the nationalised Secondary schools and within the number of sanctioned posts, the managing committee of the minority Secondary schools shall appoint the teacher with the concurrence of the school service Board constituted under section 10 of this ordinance.
 - (c) There shall be rules regarding the service condition of teachers of minority schools based on natural justice and the prevailing law, a copy of which shall be sent to the state Government.
 - (d) The Managing committee with the approval of the School Service Board shall have powers to remove a teacher, to terminate his services, to dismiss and to discharge him from service.
 - (e) Mentally and physically incapacitated person shall not be appointed as teacher or non-teaching staff of the school.
 - (f) No grant shall be admissible for payment of salary of a teacher or a non-teaching staff if appointed or retained beyond 58 years of age.
 - (g) Only such fees shall be charged from the students as are prescribed by the state Government. Prior approval of the State Government shall be necessary to charge higher fees than what is prescribed.

- (h) The schools shall be open to inspection on any working day by the authorised inspecting officers of the Education Department, the civil authority and authorised officers of the Health Department.
- (i) It shall be their duty to obey instructions regarding admission and transfer of the students, discipline and punishment, records and accounts, curricular and co-curricular activity, rules regarding health and cleanliness issued or made by the State Government.
- (j) The State Government shall have powers to issue instructions not inconsistent with the provisions of Articles 29 and 30 of the Constitution for efficient management and for improving the standard of teaching and it shall be obligatory for the recognised minority schools to comply with them.
- (k) In the event of violation of this section and the rules made thereunder and the instruction issued under it, the said managing committee may make an application within sixty days of the date of the order to the officer authorised by the State Government, against the withdrawal of recognition or withholding or stopping grants and the authorised officer shall, after hearing the case, take his decision and it shall be binding.

19. Proprietary secondary school :

If any Trust, Association or any Corporate body submits a written application for the establishment of a secondary school and undertakes to bear the entire financial burden of the institution, then on permission being accorded for its establishment as a proprietary school and on fulfilling the conditions of the permanent recognition as laid down by the State Government, the State Government shall have power to accord permanent recognition subject to the following conditions :

- (a) No grant recurring, non-recurring or compensatory shall be admissible to a proprietary school by the State Government.
- (b) The proprietary school shall be administered by a committee constituted by the proprietor in which a local officer shall be

nominated as a member by the Director, Education (incharge of secondary education).

- (c) The school managing committee with the prior approval of the proprietor will be competent to make the rules of executive business for the managing committee.
- (d) There shall be rules regarding service conditions of teachers and non-teaching staff of the proprietary school based on natural justice, which shall be prepared by the proprietors, a copy of which shall be sent to the State Government for information.
- (e) It shall be the responsibility of a proprietary school to abide by the policy decision taken by the State Government from time to time, regarding Secondary education, its curriculum, the qualification for appointment to the posts of teachers/Headmasters, Principals, regarding creation of posts and such other matters as are considered essential for the improvement of secondary education.
- (f) Only such fees shall be charged from the students of a proprietary school as are prescribed by the State Government.
- (g) The school shall be open to inspection, on any working day by an authorised inspecting officer of the Education Department, Civil authority and authorised officer of Health Department.
- (h) The State Government shall have power to withdraw the recognition of proprietary school if it does not abide by or violates the provisions of this section or the instruction issued by the State Government or the Education Department which are in conformity with these provisions. But before taking such action a reasonable opportunity shall be given to the school to explain its points.

20. Centrally sponsored secondary schools :

It shall be the responsibility of the centrally sponsored secondary schools to abide by the policy decision taken by the State Government from time to time regarding secondary education, its curriculum, the prescribed qualification for appointment to the post of Headmaster, regarding creation of posts and such other matters as are considered essential for the improvement of secondary education.

2f. Repeal and saving :

- (1) The Bihar Secondary Education Board Act, 1976 (Bihar Act 25 of 1976) and Bihar Secondary Education Board (second amendment) ordinance 1980 (Bihar Ordinance No. 82 of 1980) are hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Act and Ordinance shall be deemed to have been done or taken in exercise of the powers conferred by or under this Ordinance, as if this Ordinance were in force on the date on which such thing was done or action taken.

(A. R. Kidwai)

GOVERNOR OF BIHAR.

Date the 11th August, 1980

NIEPA DC



D00594

Sub. National Systems Unit,
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