

(1987) 04 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 2445 and 2953 of 1986

Amarendra Pratap Singh and Others

APPELLANT

Vs

Lalit Narain Mithila University and Others

RESPONDENT

Date of Decision : 01-04-1987

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 115

Citation : AIR 1987 Patna 259 : (1987) 35 BLJR 590 : (1987) PLJR 591

Hon'ble Judges : S.S. Sandhawalia, C.J.; S. Shamsul Hasan, J.; Lalit Mohan Sharma, J

Bench : Full Bench

Advocate : Chandrasekhar Jha, Arun Kumar Jha, No. 2, Anil Chandra and Satish Chandra Jha, for the Appellant; Tara Kant Jha and Binod Krishna Jha, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—Can compassion for an unfortunate student of an unrecognised and unaffiliated educational institution warrant a mandamus for the declaration of his examination result contrary to the statutory provisions or University Regulations -- is in essence the core question before the Full Bench in this reference.

2, The facts lie in a narrow compass and may be noticed with relative brevity from C.W.J.C. No. 2445 of 1986 in these two connected writ petitions. The two petitioners therein were the students of a proposed L. N. Mishra Teachers' Training College which admittedly is neither a recognised nor an affiliated institution of the respondent L. N. Mithila University. Nevertheless it is averred on their behalf that they were allowed to sit in the Bachelor of Education examination in the month of December, 1980 by the aforesaid respondent University as private candidates and admit cards were also issued to them by the University on a provisional basis along with others. It is claimed that though the

petitioners had been able to pass the said examination successfully, their result is not being declared on the ground that their applications were not in conformity with the requirement of law and University Regulations which, inter alia, required payment of additional amount of Rs. 25A as permission fee. It is averred that in the year 1982 some other students similarly situated preferred C.W.J.C. No. 2147 of 1982 Kumud Kumar Singh v. L. N. Mithila University against the respondent University, which was disposed of on 25th of August, 1982 with the direction to the University to consider the case of the petitioners sympathetically (vide annexure-1). Thereafter respondent No. 3, the officer on special duty of the respondent University issued letters in the same of the petitioners for depositing a sum of Rs. 25/- by way of bank draft or crossed postal order on or before the 15th of February, 1986 in purported compliance with the direction of the Hon"ble High Court in the writ petition aforesaid. The petitioners complied with the said direction but nevertheless the publication of the result was inordinately delayed. Thereafter they approached respondent No. 3 who informed the petitioners that the direction in C.W.J.C No. 2147 of 1983, was with regard to the particular petitioners therein and not regarding others similarly situated and consequently the petitioners' result could not be published. Aggrieved thereby, the present writ petition has been preferred seeking a mandamus that the respondents be directed to publish the petitioners' result forthwith.

3. In the counter-affidavit filed on behalf of the three respondents, the firm stand taken is that both the petitioners were not qualified or eligible at all to take the examination in view of the statutory provisions and the University regulations. It is categorically stated that the petitioners claim to be the students of the proposed L. N. Mishra Teachers' Training College, Saharsa, which was an unrecognised and unaffiliated institution. Since the transitory regulations framed by the Chancellor had come to an end, there was no provision whatsoever for the examinees of 1978 under which the students of the aforesaid institution could possibly be permitted to sit in the examination even as private candidates. The University, therefore, could not allow them to sit at the examination conducted by it under the relevant laws. Indeed the unaffiliated teachers' training colleges were not at all entitled to send their students to sit at these examinations conducted by the University for their students. It is then the case that the Principal of the Government Teachers' Training College, Saharsa, fraudulently and in collusion with the Principal of the unrecognised and unaffiliated and as yet merely proposed L. N. Mishra Teachers' Training College forwarded the names of the petitioners and other students to sit in the examination as ex-students of the said Government College. This fraud could not be detected at the time of issuing of admit cards. However, when later this was brought to the notice of the University at the eleventh hour, it was unable to prevent such unauthorised students from taking the examination because of the likely disturbance and breach of law and order. However, later, on close perusal of the relevant records the petitioners and others similarly situated, who had masqueraded themselves as ex-students of the Government Teachers' Training College with the fraudulent

concurrence of the Principal of that institution were identified and their results held up. The petitioners and others similarly situated, who were not students of any affiliated or recognised College, were, therefore, disentitled to sit at the examination at all even as private students. Indeed the firm stand of the University is that the purported L. N. Mishra Teachers' Training College does not in fact exist as an institution at all and the petitioners and others similarly situated have not completed their studies of the Bachelor of Education with an affiliated institution according to the Regulations of the respondent University. The admit cards were secured by the petitioners fraudulently in the circumstances delineated above. Express reliance has been placed on Regulation 4(2) of Chapter XXII of the Regulations and Regulations 18 and 37 of Chapter II of the said Regulations.

4, As regards the earlier C.W.J.C. No. 2147 of 1983, it is averred that in the light of the order of High Court the cases of the seven petitioners in that writ petition were considered by the University and obeying the wish and the observations of the High Court their result was declared. However, the University confined such relief only to those seven petitioners and did not intend to extend any such concession to others who were party to the fraud. However, by mistake other persons also managed to secure cyclostyled copy of the letter issued to the writ petitioners of C.W.J.C. No. 2147 of 1983. It is reiterated that under the University laws no permission to a private candidate to take the examination is granted in the case of technical education including the Bachelor of Education course without being student of an affiliated institution.

5. At the very threshold one must notice the forceful and categorical stand of Mr. Tara Kant Jha for the respondent University that on the larger aspect the matter is now concluded in favour of the respondents by the recent precedent in N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, . This submission appears to me as impeccable. A perusal of the judgment would indicate that it presents remarkable similarities with the present one. That was a case from Andhra Pradesh and their Lordships noticed that there has been a rush of unauthorised educational organisations for teachers' training institutions which had remained unrecognised and unaffiliated and, in fact, the State Government refused permission for the establishment of such institution. Nevertheless on behalf of the students of these unrecognised and unaffiliated institutions, an impassioned plea was made that they should be permitted to take the examinations. Summarily brushing aside such stand, their Lordships have observed and laid down as under : --

".....A similar request was made by Shri Garg that the students who have undergone training for the one year course in these private institutions may be allowed to appear at the examination notwithstanding the fact that permission might not be accorded to them. We are unable to accede to these requests. These institutions were established and the students were admitted into these institutes despite a series of press notes issued by the Government. If by a fiat of

the Court we direct the Government to permit them to appear at the examination we will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the Court either under Article 32 of the Constitution or Article 226 should be frittered away for such a purpose. The Teachers Training Institutions are meant to teach children of impressionable age and we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training. True they will be required to pass the examination but that may not be enough. Training for a certain minimum period in a properly organised and equipped Training Institute is probably essential before a teacher may be duly launched. We have no hesitation in dismissing the writ petitions with costs."

It is manifest from the above that it has now been authoritatively laid down that allowing students of unaffiliated and unrecognised institutions to appear in examination primarily on grounds of compassion would be encouraging and condoning the establishment of such unauthorised institutions and is tantamount to an unwarranted exercise of the writ jurisdiction by the Courts. The issues herein have now to be examined in the light of this refreshing enunciation of the law.

6. One may now revert to the uncontroverted factual matrix that emerges herein. The L. N. Mishras Teachers' Training College, of which the petitioners purport to be students, is more a fiction than a fact because of the repeated stand of the respondent University that no such institution exists. By a fraudulent collusion with the Principal of the Government Teachers' Training College, Saharsa, the names of the petitioners and others so similarly situated were inveigled in by masquerading them as the ex-students of the Government Teachers' Training College, Saharsa. On this fraudulent basis, admit cards for the petitioners and other purported students of L. N. Mishra Teachers' Training College were secured and the petitioners and others sat in the examination. The respondent University, however, when it discovered the fraud, forthrightly declined to allow the petitioners and others to take advantage of their own wrong and did not declare the result. On this factual position, the issue is whether the petitioners can claim the relief of a writ of mandamus for the declaration of their result.

7. Now the sheet-anchor of the learned counsel for the petitioners' stand was that the University had rightly or wrongly issued the admit cards to the petitioners on the basis of which they had taken the examination, and therefore, the respondent University could not retrace its steps and was estopped from questioning its fraudulent nature. It was contended that due to the negligence of the University's employees in issuing the admit cards and permitting the petitioners to take the examination the matter had become sacrosanct and cannot be reversed.

8. To my mind, the submission aforesaid is untenable on principle and precedent. There cannot possibly be any legal estoppel resting on fraudulent representation

or sharp practice. It has been rightly said as a hallowed rule that fraud vitiates everything. For the petitioners to contend that by virtue of a fraudulent collusion with the Principal of the Government Teachers' Training College, Saharsa and the dubious and under-hand securing of the admit cards they have laid foundation of a legal or equitable estoppel in their favour appears to me as an argument utterly unwarranted.

9. It would be wasteful to elaborate the issue on principle because it appears to be covered by a precedent of long standing within this jurisdiction with which I would unreservedly agree. The virtually identical point was raised and categorically repelled by a strong Division Bench presided over by S. K. Das, J., (as the learned Chief Justice then was) in the following words in *Prasun Kumar Chatterjee and Another Vs. Governing Body of Raja Sivaprasad College and Others*, :--

"The next point that has been raised by the learned Counsel is the point of estoppel, and the basis for this contention is the issue of Admit Cards by the University. The learned counsel has contended that the University is now estopped from contending that the petitioners were not entitled to sit at the examination because they had issued Admit Cards to them, and he has further submitted that this Court should grant the writ "ex debito justitiae", because the principles of natural justice have been violated. It is, however, to be noted that the issue of Admit Cards was only a ministerial act of an officer of the University. There could be no presumption that the college had been granted affiliation up to the I.Sc. standard, and nobody could act on such assumption without ascertaining the true facts, the true facts being that no affiliation had been granted or announced. The issue of the Admit Cards could, therefore, create no estoppel against the University. If there had been no affiliation according to law then acts done in ignorance or on account of carelessness or inadvertence could create no estoppel. A representation or admission on matter of law cannot constitute any basis for estoppel. When the statute says that it is only the senate which can grant affiliation, recommendation by Inspectors and Correspondence, and personal talks with the Vice-Chancellor and even the careless issue of Admit Cards cannot be taken into consideration for the purpose of granting a writ under Article 226, of the Constitution of India."

10. In fairness to the learned counsel for the petitioners, one must refer to his reliance on *Harphool Singh Vs. State of Rajasthan and Others*, which has received passing approval in *Amresh Kumar Vs. Principal, Bhagalpur Medical College, Bhagalpur and Another*, . With the deepest respect, I feel compelled to record a dissent with the vacillating view of the learned single Judge in *Harphool Singh's* case. Therein despite a finding that the petitioner had secured admission in the medical college on the basis of a false and fraudulent declaration of being a scheduled caste and securing a certificate therefor, it was held that the principle of estoppel would be attracted in his favour. In his own words, the learned single Judge first said : --

"The Court has been put in severe and serious "predicament" due to this, and is caught in what is proverbially termed as "horns of dilemma",

after earlier having arrived at the following finding : --

"The least which can be said, is that on a careful study of all the documents and more particularly, the form filled in by the boy in the Doongar College, Bikaner and the different stories about the parentage leave an impression that effort has been made to secure admission in the medical college by hook or by crook, and by misusing "Reservation Quota".

With the greatest respect, I am unable to see how a writ could issue in favour of the petitioner after the aforesaid finding. In my humble opinion, the learned single Judge deviated into extraneous considerations of what was termed as a national wastage of the seat and the fact that a scheduled caste candidate could not now be admitted against the reserved quota falsely and fraudulently usurped by the petitioner therein. Most respectfully, these were considerations alien to the issues of the grant of writ of certiorari and mandamus. It appears that the ground of compassion unduly swayed the judgment on the wrong side of the horns of dilemma and it appears to be yet another example of hard cases making bad laws. It would appear that the aforesaid judgment received passing and partial approval by a Division Bench in Amresh Kumar v. Principal, Bhagalpur Medical College, Bhagalpur (supra). For the reasons recorded earlier, the said case must be overruled on this limited aspect, while pointing out that the remaining ratios were sustainable on the firm finding that therein there was not the least semblance of fraud. Indeed, the Division Bench itself observed as follows: --

"If it would have been a case of forgery in obtaining any of those two certificates produced by the petitioner the matter may have been different.....No fraud can be said to have been committed by the petitioner....."

11. In the light of the above, it must be held that herein no question of any legal or equitable estoppel can possibly arise.

12. Learned counsel for the respondent University, Mr. Tara Kant Jha, was, however even on a stronger footing in contending that herein there can possibly be no estoppel against the statute itself because both the law and the University Regulations having the force of law create a frontal bar against the petitioners being permitted to take the examination. This stand of the respondent again appears to be wholly unassailable. It would appear that the law now unequivocally forbids the purported students of unrecognised or unaffiliated teachers" training institutes to sit in Bachelor of Education examination either privately or through any other institution. This requirement of the law has perhaps become imperative in the light of the mushroom growth of such fraudulent institution which were cashing in and parasiting on the innocence and the ignorance of poor students seeking the requisite qualifications of training as teachers. Consequently, Ordinance No. 61 of 1978 was duly promulgated

imposing an absolute bar by Section 2 thereof. This was followed by successor Ordinances till it was finally enacted as Act 21 of 1982. English translation of Section 2 of the said Act is in the following terms : --

"2. Control over non-Government Physical Training College and Teachers Training College and Primary Teachers Training College.-- (1) Any person or institution or Committee -

(a) Shall not organise, maintain, manage or convert any school or college for undertaking, conducting, providing or giving physical training or physical education or training of teachers or educating teachers in the form of training (and) education without the prior assent of the State Government which the State Government wants to give on such terms and conditions which shall be proper in the opinion of the State Government and without fulfilling such terms and conditions where the prior assent of the State Government might have been given under the terms and conditions fixed by the State Government

(b) Shall not admit or propose to admit in such courses of study in any body or University regulated by any Law of the Centre or State Government which takes up to the examination of the branches or affiliated Branches of the training (and) education and giving and granting of Degree, Diploma and Certificate.

(c) Shall not make provision for giving lecture, instruction and practical training which can be given in training (and) education whether or not it takes up to any examination of the affiliated branches of the training (and) education or up to the granting of Degree, Diploma or Certificate.

(2) The decision of the State Government shall be final and binding on the point whether or not the terms and conditions fixed by the State Government have been fully fulfilled.

13. In the light of the above, there would remain little doubt that the law has now imposed a complete ban on an unrecognised and unaffiliated institution in technical fields including the teachers' training institutes. The necessary corollary thereof is that the purported students of these unauthorised institutions are not entitled to sit in the University examinations. Indeed, they cannot do so either by the dubious medium of recognised institution or even as private students. Once that is so, would it be possible to issue a mandamus in favour of a person in direct infraction and contravention of such law. The answer has to be rendered in a categoric negative both on principle and in view of the binding precedent in *N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another*, .

14. In this connection, a reference also is to be made to regulation 18 of Chapter II of the Regulations which is in the following terms : --

"If a candidate, subsequent to the issue of an admit card is found to be ineligible to take the examination, his candidature shall be cancelled."

To my mind, the intent and language of the aforesaid provision is unequivocal. It

says so and is intended to confer power to cancel the candidature irrespective of the issuance of the admit cards if ultimately it transpires that the students were not eligible to take the examination. This residuary power has been conferred in express terms and is undoubtedly necessary to overcome chicanery or fraud in obtaining admit cards at the lower ministerial level. Indeed, the language of regulation 18 is in mandatory terms and commands the authority to cancel the candidature if the student is found ineligible therefor. Yet again reference may be made to regulation 37 of Chapter II of the Regulations in the terms following :

"The Examination Board shall have power to quash or revise results of a candidate after it has been declared if it is found that he was ineligible to appear at the examination."

The aforesaid provision again confers power on the Examination Board to even quash or revise the declared results on the ground of ineligibility to appear in the examination.

15. Lastly, learned counsel for the respondent pinpointed that the transitory Regulations framed by the Chancellor had now lapsed and at the material time no law existed under which examinees of 1978 could be permitted to sit in the examination even as private candidates even if the University was minded to give such permission.

16. In the face of all the aforesaid statutory provisions, there can possibly be no estoppel against them. Therefore, the claim for a mandamus to declare the results of students who were plainly ineligible to take the examination appears to me as the proverbially crying for the moon.

17. Learned counsel for the petitioners then argued that by virtue of Annexure-1 the Court had earlier granted relief to some persons similarly situated as the petitioners and they were, therefore, entitled to an identical relief. It was argued that University having in terms accepted the velvet-gloved mandate of sympathetic consideration directed by the Court in the case of those petitioners cannot now act differently in case of the present petitioners and indeed of all others analogously situated. Reliance was sought to be placed on *S.A.F. Abbas and Others Vs. State of Bihar and Others*, , *Dr. C. M. Srivastava v. State of Bihar and Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, .

18. On the other hand, Mr. Tara Kant Jha, the learned counsel for the respondent University, minced no words in contending that the judgment in *Kumud Kumar Singh's case (C.W.J.C, No. 2147 of 1982) (Pat)* directing sympathetic consideration of the students of unrecognised and unaffiliated institutions who were plainly ineligible for taking the examination is patently erroneous and should be overruled at the earliest. He pinpointed that the said judgment was rendered contrary to the long standing view in *Prasun Kumar Chatterjee and Another Vs. Governing Body of Raja Sivaprasad College and Others*, and is now in a headlong conflict with the Supreme Court's enunciation in *N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another*, . I am

inclined to the view that the stand taken on behalf of the respondent herein is incontrovertible. It is plain that the view expressed and the direction given in Kumud Kumar Singh's case was long before the authoritative enunciation in the Supreme Court later. There is no gainsaying the fact that earlier there was some vacillation on the issue and there were a number of what we may call compassionate cases of individual examinees where relief had been empirically awarded for exceptional considerations of hardship without in any way advertent to the legal position. I believe the cobwebs now been cleared and all doubts set at rest by the final Court. The view in the case of Kumud Kumar Singh (supra) is thus no longer good law. Even otherwise it appears from the short judgment that the matter could not be considered in any great depth. It turned on the issue that under regulation 18 the University had as yet not cancelled the candidature of the petitioners and procedural requirements of the deposit of Rs. 25/- could be satisfied. The operative part was merely a suggestion in the following terms : --

"The University-authorities are directed to consider the case of the petitioners and pass appropriate orders. It is significant to note that the filing of the suitable form and paying a sum of Rs. 25/- is a matter procedural in nature and it does not go to the substance of the matter which relates to the educational equipment of the petitioners and in that light it is expected that the University authorities will consider the petitioners' case sympathetically."

It is manifest that the fraudulent methodology of securing the admit cards, the absolute statutory bars u/s 2 of the Act (No. 21 of 1982) and the infraction of the University regulations 18 and 37 were not brought to the notice of the Bench and seem to have missed consideration. With the deepest respect, the judgment and the direction given therein cannot be sustained and the same is hereby overruled.

19. Learned counsel for the petitioners was fair enough to concede that his main plank was the earlier judgment of the Court in Kumud Kumar Singh's case (C.W.J.C. No. 2147 of 1982) (Pat) and if it is held that the said judgment can no longer hold the field then no question of any discrimination or right arises. In view of the aforesaid finding little or nothing survives on this aspect.

However, in fairness to the learned counsel for the petitioners one might as well notice his stand that because the University in the case of the petitioners in Kumud Kumar Singh had later respected the direction of the Court and declared their result, they cannot now act otherwise in the case of the petitioners.

20. The somewhat tenuous submission aforesaid has only to be noticed and rejected. A reading of the judgment in the case of Kumud Kumar (supra) and the operative part of which has been quoted earlier, can leave little manner of doubt about the intent and the tilt of the direction given to the University. Mr. Tara Kant Jha rightly pointed out both from the pleadings in the counter-affidavit and in his submissions at the bar that the University had acted as it did with regard to the case of the petitioners in Kumud Kumar Singh's case, in respectful deference to the observation of the Court. In the background of the judgment, a direction to

accept the additional amount of Rs. 25/- per petitioner and to consider their case sympathetically, because it involved the educational equipment of the petitioners, could not but be read as a command to the University and it duly treated it with the respect due to the order of the High Court. However, to say that thereafter the University must nevertheless continue to act contrary to law and the provisions of its Regulations not qua the petitioners therein only but necessarily qua all others analogously situated, would be carrying the matter to illogical lengths. In any case, the said judgment having been overruled, no such submission is permissible. Plainly enough, no mandamus can be issued to perpetuate a mistake. If the law places a total ban on the students of unrecognised and unaffiliated institutions to take the examination of Bachelor of Education then it is not for this Court to override the same and of all things through the medium of a mandamus contrary to law. Indeed, Mr. Tara Kant Jha was right in submitting that the University might make a mistake or may have acted erroneously but the High Court cannot possibly mandate something contrary to law, or the perpetuation of an illegality. Consequently, he further submitted that in the situation no question of discrimination now arises and, indeed, it will be incongruous and a case of reverse discrimination in so far as the petitioners are seeking a mandamus contrary to statutory provisions and to perpetuate a direction in a judgment which stands overruled.

21. It remains to refer briefly to the judgment relied upon by the learned counsel for the petitioners on this aspect. In *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, their Lordships were considering the provisions of Clause 2(b) of Ordinance X in Volume I of the Kurukshetra University Calendar. On the specific language of that provision their Lordships held that the University had no power to withdraw the candidature of the appellant. They also noticed that in *Premji Bhai Ganesh Bhai Kshatriya v. Vice-Chancellor, Ravishanker University, Raipur*, AIR 1967 Madh Pra 194 there was no provision in Ordinance 19 and Ordinance 48 of the Raipur University which enabled the Chancellor to withdraw the permission. Both the judgments, therefore, turned wholly on the specific language of the statutory provisions applicable. As has been shown earlier, in the present case regulations 18 and 37 expressly confer such a power. The cases, therefore, are plainly distinguishable.

22. In *S.A.F. Abbas and Others Vs. State of Bihar and Others*, it has been held that an administrative order by persistent repetition may become quasi-judicial. There is no quarrel with that proposition. However, I regret my inability to appreciate as to how this judgment in any way would advance the case of the petitioners herein. Similarly, learned counsel's reliance on para 74 in *Dr. C. M. Srivastava v. State of Bihar* 1972 PLJR 182 : (1972 Lab IC 1325) would only further highlight the basic requirements before a writ of mandamus can possibly issue, and, far from aiding the petitioners, would indeed boomerang on their case. On this aspect I would not wish to equivocate that even though the quality of mercy may indeed be twice blessed in the poetic fields, yet it cannot in the realm of law be allowed to override the fundamental requirements for the

issuance of a mandamus. Indeed, if I recall aright, a mandamus can issue only as a command for the performance of statutory public duty for which the petitioners have a corresponding enforceable right. However hard be the case and howsoever large be the need for compassion, no mandamus can issue or be permitted to issue contrary to law and the statutory provisions applicable.

22(a). To finally conclude, the answer to the question posed at the very outset is rendered in the negative and it is held that no amount of compassion for an unfortunate student of an unrecognised and unaffiliated educational institution warrants a mandamus for the declaration of his examination result contrary to the statutory provisions and University regulations.

23. In the light of the aforesaid conclusion, it is manifest that nothing survives in the petitioners' case. The respondent University has established that both under the Act and under the University regulations the petitioners were ineligible for sitting in the examination of the Bachelor of Education. Consequently no writ for the declaration of the result can possibly issue. Both the writ petitions are hereby dismissed, but in view of the fact that the case involves poor students who may have been inveigled into joining the unrecognised and unaffiliated institution, there shall be no order as to costs.

Lalit Mohan Sharma, J. (Dissenting)

24. I have gone through the judgment of the Hon'ble Chief Justice and regret my inability to agree with it. In my view the questions which arise for decision can be stated thus : --

(a) Whether, the refusal to publish the result of the petitioners while announcing that of others appearing at the same examination in exactly identical circumstances without even a pretence of any distinguishing feature, amounts to illegal discrimination;

(b) Whether, after the respondent University, on taking into consideration all the relevant circumstances, decided the issue of eligibility of the candidates in their favour and demanded from the petitioners additional fees on that basis, which were paid, the University is estopped from reviewing its decision to the serious disadvantage of the petitioners;

(c) Whether, in absence of specific allegation of any act or omission on the part of the petitioners by the respondents either in their counter-affidavit filed before this Court or made at any point of time anywhere else, the petitioners can be assumed to be guilty of fraud merely on the basis of a vague and unsubstantiated statement in the counter-affidavit that the "Principal of the Government College in collusion with the students and Principal of the proposed Training College in question, forwarded the names of the students to sit" at the examination;

(d) Whether, Regulation 18 of Chapter II of the University Regulations providing for cancellation of the candidature of an examinee on certain conditions, by

necessary implication, requires holding of an enquiry with notice and opportunity to the concerned examinee to place his case;

(e) Whether, it is essential to record a finding on the fulfilment of the prescribed condition before cancelling the candidature under Regulation 18;

(f) Whether Section 2 of Bihar Ordinance No. 61 of 1978 puts an absolute bar on the power of the University to permit private candidates to sit at the examination, and whether consequently the earlier University law got impliedly modified; and

(g) Whether, the refusal to publish the result of the petitioners without cancelling their candidature is illegal.

25. It is unnecessary to re-state the facts of the case in detail leading to the filing of these writ petitions but I would like to emphasise some of the circumstances which appear to me to be highly important. More than 100 candidates had appeared at the B.Ed examination in 1978 as private candidates and only 18 out of them including the present petitioners were successful. The University authorities, however, refused to formally publish their results and some of them moved this Court by an application under Article 226 of the Constitution which was registered as C.W.J.C. No. 2147 of 1982. It was, inter alia, contended on behalf of the petitioners of that case that since no formal order cancelling their candidature was passed under Regulation 18, mentioned below (as quoted in para 9 of the counter-affidavit and heavily relied on by the respondents) the respondents were not entitled to ignore the petitioners and refuse to publish their results : --

"Regulation 18 -- If a candidate, subsequent to the issue of an admit card is found to be ineligible to take the examination, his candidature shall be cancelled."

The Bench hearing the case agreed with the petitioners and directed the authorities to consider their cases and pass appropriate orders under Regulation 18 before taking a decision against them. The University, on a reconsideration, however, decided to publish their result on receipt of additional fees and forms. So far the present petitioners are concerned, the authorities informed them that they could also get their results published but only after completing the formality by way of payment of additional fee of Rs. 25/-(for each candidate) accompanied by another application as was done by the petitioners of the earlier writ case. The present petitioners have attached cyclostyled copies of the letters issued to them under the signature of the respondent No. 3 in January 1986. The petitioners promptly complied with the request and sent their applications along with the money receipts. However, their results were not published for several months and some of them met the respondent No 3 and reminded him about the delay, when they were told that since the High Court had, on the earlier occasion, passed an order directing the authorities to consider the matter, the present petitioners also should obtain a similar direction; and until that is not done, it was not possible to publish their results. In this background the

petitioners had to approach this Court with the present writ petitions.

26. Admittedly, the University was earlier allowing non-collegiate students to sit at the University examination as private candidates. According to the case of the respondents, on account of a change in the law this was not permissible in 1978 when the examination in question was scheduled to be held. In the counter-affidavit it is stated that the rule relating to permission to private candidates for taking the examination on payment of additional fees of Rs. 25/- was contained in Regulation 4(2) of Chapter XXII of the Regulations which "came to an end". The Regulations and the other relevant provisions vaguely referred to by their learned counsel in their arguments were not placed before us, excepting the Bihar Act 21 of 1982 considered in para 12 of the judgment of Hon'ble Chief Justice, although I had expressed a desire to examine them during the hearing. The learned counsel for the petitioners stated that the provisions had not been printed on commercial basis and they cannot lay their hands on them; and although the learned counsel for the University stated that, they would be requesting the authorities for copies thereof, none were filed. The aforesaid regulation 4(2), however, is quoted in para 6(ii) of the counter-affidavit. It is further stated in para 6(iii) (of the counter-affidavit) that the students of the unaffiliated L. N. Mishra Teachers' Training College, Saharsa (of which the present petitioners and the petitioners of the earlier writ case were students) admitted during the earlier academic sessions were allowed to appear at the examination as private candidates under "a transitory regulation framed by the Chancellor", but "since the life of the transitory regulation came to an end there was no law for the examinees of 1978 under which they could be given similar permission". The objection of the University authorities is, therefore, dependent on the alleged change in the law and is not relating to lack of any basic qualification educational or otherwise. If the relevant provisions of the Regulations read with Regulation 4(2) had continued to be operative, then according to the respondents also the petitioners were eligible for sitting at the examination as private candidates. The petitioners had earlier obtained the B.A. Degree as stated by them and not denied, and did not, therefore, lack the required educational qualification.

27. The earlier writ case, namely, C.W.J.C. 2147 of 1982 was disposed of by the judgment (by me, Hon'ble Sarwar Ali the then Acting Chief Justice agreeing) as contained in annexure 1, directing the University authorities to consider the claim of the petitioners of that case and pass appropriate orders. On behalf of the respondents (in that case), it was, inter alia, argued that since the applications were not in conformity with the requirements of private candidates and that the additional amount of Rs. 25/- per candidate had not been paid, their results could not be published. This Court observed that these formalities should be completed by the petitioners immediately. The deficiency, on the basis of which the writ petitioners were being treated to be disqualified, was considered technical and not vital by observing that it was procedural in nature and did not go to the substance of the matter relating to the educational equipment of the

petitioners. The University authorities reconsidered the case of those petitioners and in their discretion decided to publish their results. The position in the present case remains exactly identical. In fact, the learned counsel for the respondents was fair enough not to suggest that there could be any distinguishing feature. In this situation, I do not agree with the respondents that the present petitioners can be denied the benefit of the decision taken in favour of the other examinees.

28. Mr. Tara Kant Jha, the University counsel, interpreted the High Court decision as not deciding any of the points involved in the case finally. He urged that the entire matter was left to the discretion of the University authorities. He appears to be right excepting two points. While dealing with the effect of Regulation 18 and the argument of the petitioners that an order cancelling the candidature of the writ petitioners had to be passed before the authorities could decide to withhold their results, I had said thus "the stand taken on behalf of the petitioners, therefore, appears to be correct". This Court, therefore, finally held that the University authority could not withhold the result of an examinee without cancelling his candidature. The next point related to the nature of the deficiency in the candidature of the writ petitioners on account of non-payment of the additional amount of Rs. 25/- per candidate payable by a private candidate and non-filing of their applications in prescribed form, which was held as technical and not vitally affecting their right to get the result published. Mr. Tara Kant Jha contended that if his interpretation of the judgment (Annexure-1) that the High Court did not decide any question finally and it merely remitted the matter for the reconsideration of the University is not accepted, then the decision should be held to be erroneous. I do not agree with him and I reiterate that the views were correctly taken. The cancellation of a candidature is not an unimportant matter; it affects the candidate seriously and, therefore, cannot be ordered in a casual manner. The question of cancellation, therefore, has to be considered by bestowing thought to the situation, considering the facts and circumstances closely and carefully arriving at unambiguous relevant findings by a proper order. It is not suggested that such an order has been passed in the present case. Further, in view of the serious consequences which follow an order of cancellation, the affected candidate must be given an opportunity to place his case which admittedly has not been done here. Since the candidature of the petitioners has not been cancelled, the plea of the University has to be rejected on this ground alone. The decision was not challenged by the University either by way of review or an appeal before the Supreme Court and as a decision, it became final and a co-ordinate Bench (be it a Full Bench) does not have the jurisdiction to set it aside or to collaterally declare it erroneous. It was in the circumstances expected of the University to follow the same with respect to all the examinees sitting at that very examination. Not to do so would result in gross illegal discrimination. However, subject to this aspect, the present stand of the University that they were free to take a final decision in regard to the claim of the writ petitioners, according to their interpretation of the facts and law and were not bound by the observations in the judgment for considering their cases

"sympathetically" is correct.

29. Now, let us proceed to examine as to what the University actually did in this background. According to the counter affidavit in the present case, the entire situation was correctly within the knowledge of the authorities before the commencement of the examination in question, and they according to their case fully realised that the private candidates were not entitled to sit at the examination. They, however, did not disqualify them at that stage as that could have led to some "disturbance". Let me assume that the authorities were justified at, that stage to act as they did, but what is important to notice is that they were in possession of the entire circumstance including the legal and factual aspects when the earlier writ case was heard. It has not been suggested that when they proceeded to reconsider the case of the earlier writ petitioners, anything was missing which was brought to their knowledge later. If their present stand is correct, they ought to have, after-consideration of the claim of the earlier writ petitioners cancelled their candidatures under Regulation 18, which they did not do. If in the exercise of their discretion they took a decision to permit some of the private candidates to enjoy the fruits of their examination, it is entirely illegal now to deny the present petitioners the same benefit especially when the objection to their candidature is so technical in nature.

30. It was faintly suggested during the argument addressed on behalf of the University that the petitioners must be held to be guilty of fraud in misleading the University authorities on a question of fact and they are, therefore, not entitled to any relief. The entire allegation of the alleged fraud or collusion, as stated in the counter-affidavit, is to be found in para 7 which is quoted below: --

"7. That as a matter of facts, the Principal of the proposed L. N. Mishra Teachers" Training College sent the students as-ex-students of the Govt. Teachers" Training College, Saharsa. The Principal of the Govt. College in collusion with the students and Principal of the proposed Training College in question, forwarded the names of the students to sit at examination for which he was not entitled. Ex-students which could not be detected at the time of issuing Admission-Cards (Sic). As soon as the University was informed that the list of Ex-students of the Govt. Teachers" Training College, Saharsa also included the students of proposed L. N. Mishra Teachers" Training College, Saharsa (Sic). The students were allowed to sit at the examination on the eleventh hour so that examination may not be disturbed by them and the same is concluded peacefully. On perusal of relevant records the ineligible students of the proposed L. N. Mishra Teachers" Training College, Saharsa who styled themselves as Ex-students of the Govt. Teachers" Training College, Saharsa, due to the connivance of the Principal, Govt. Teachers" Training College, Saharsa could be identified and their results were held up. Thus these petitioners were not students of affiliated college as such they were not entitled to sit at the examination and there was no transitory Regulation under which they could appear even as private students."

The affidavit has been sworn by a clerk describing himself as Section Officer who

has stated that the facts are true to his knowledge "based on records of the University". It is not disclosed as to what is the basis for saying that the students of the college were in collusion with the two Principals or whether all the students were party to the fraud or only some of them. During the hearing I repeatedly put to the learned counsel of the University that what was being suggested in the argument against the petitioners was a serious matter and it cannot be lightly accepted unless the respondents were able to refer to some reliable material in this regard. The University has not been able to place before us any relevant material. The affidavit does not give any idea as to what the students did which can be interpreted as a fraudulent act and whether all of them were guilty of such conduct. If it is assumed that the petitioners of the earlier writ case were not parties to the alleged fraud, then the next question arises as to what about the present petitioners. Did they make any wrong endorsement on their application forms which misled the University? This aspect assumes great importance, because if the Principal or the Principals misled the University by a false representation the petitioners should not be punished unless they can be shown to be party to it. I do not know in the first instance as to what the Principals themselves did and further the records do not give any idea as to whether the petitioners had any knowledge of whatever was happening between the Principals on the one hand and the University on the other. I; do not expect the students to go into the intricacies of a highly technical legal situation which the University took several years to analyse and appreciate and for the interpretation of which the present Full Bench had to be constituted for scrutinising the opinion expressed by a Division Bench. The petitioners, therefore, cannot be blamed for any alleged omission on their part to approach the University authorities and tell them that before they were allowed to sit at the examination the matter should be examined in the light of the change in the law, if there was any such change. If I am to assume that the allegation in the counter-affidavit quoted above is directed against all the students, it does not stand to reason as to why the candidature of the earlier writ petitioners was not cancelled, especially when on their own case the authorities were in full possession of all the relevant circumstances even before the actual commencement of the examination.

31. It is true that if the University authorities had some reason before them to suspect the complicity of the petitioners in a conspiracy to deceive the University, they were entitled to cancel their candidature under Regulation 18 but they were, in those circumstances, under a duty to hold a proper enquiry after giving reasonable opportunity to the petitioners to meet the charge. It is too late in the day to suggest that the petitioners can be condemned as a perpetrator of fraud and a co-conspirator without being heard. I, therefore, reject the suggestion thrown on behalf of the respondents during the argument that the petitioners must be held to be party to a conspiracy, with the two Principals. Besides, in the circumstances of the case, it is not possible to come to any conclusion on the allegation even against the Principals who are not parties to this writ petition.

This case, therefore, must be decided on the basis that the petitioners are innocent victims of whatever has happened all these years.

32. Mr. Tara Kant Jha placed great reliance on the judgment in *Nageshwaramma v. State of Andhra Pradesh*, AIR 1986 SC 1188. I do not think that the points pressed on behalf of the petitioners can be rejected on the basis of this decision. Firstly, it will be observed that the main fight in the cases before the Supreme Court was being given by unauthorised institution (which had been established illegally) supported by only one student in one of the writ petitions. The main judgment, therefore, dealt with the claim of unrecognised institutions. Towards the end of the last paragraph of the judgment, an appeal was made on behalf of the students to permit her to appear at the examination on the sole ground that in the previous years, similar students had been so allowed by the Government out of sympathy. The statements in para 1 indicate that after the grant of the aforementioned permission to some students the Government took serious note of the fact that many unauthorised institutions were being established and in order to prevent unwary students from being trapped into joining them, the Government issued Press notes from time to time warning the public that candidates seeking admission into such institutions would be so doing at their own risk. In some of the Press notes, the names of the unauthorised institutions were also mentioned. In spite of these steps, the student petitioner had joined one of the institutions and wanted a favourable, direction from the Supreme Court which was refused. Clearly, in such circumstances, neither a case of estoppel nor consideration of justice and equity arose in her favour. The decision, in my view, has no application to the present writ cases. Here permission to appear as private candidates, was accorded under statutory rules which had "disappeared" according to the respondents. In this situation I do not expect the examinees to have investigated the legal position so as to appreciate the technical situation accurately. There was nobody to fore-warn the petitioners of the situation. They belong to the category of such unwary persons for whose benefit the Andhra Pradesh Government (as mentioned in *Nageshwaramma's* case) had repeatedly published warning. The matter does not rest there. When some of the candidates approached this Court by the earlier writ petition this Court required the authorities to reconsider the matter, exactly as was done by the Andhra Pradesh High Court. While in *Nageshwaramma's* case, the Government after making a very thorough enquiry, as indicated in the Supreme Court judgment, refused the permission to the petitioner, the respondent-University before us allowed the prayer of the earlier writ petitioners and demanded additional fee from the present petitioners as well for the purpose of publication of their result. The money was paid and is still in the coffers of the University and the University after sitting over the matter for some time asked the petitioners to obtain an order from the High Court similar to that passed in the earlier case. I do not think the respondents were justified in their request. While considering the case of the earlier writ-petitioners they were expected to take a decision applicable for all the examinees. There was no special reason for

favouring the earlier writ-petitioners by allowing their prayer and at the same time asking the present petitioners to undergo the ritualistic formality of obtaining similar order from the High Court. Besides, I did not expect the University to contest these writ petitions, then they have been filed on their suggestion.

33. The decision of this Court in *Prasun Kumar Chatterjee and Another Vs. Governing Body of Raja Sivaprasad College and Others*, , is also clearly distinguishable and does not help the respondents. The students in that case appeared in two papers and thereafter were not allowed to sit at the examination of the remaining papers and their claim for permission to do so on the basis of issuance of the Admit Cards was rejected on the ground that "the issue of Admit Cards was only a ministerial act of an officer of the University", and "could, therefore, create no estoppel against the University". On the other hand, this Court has in a long line of cases (I need not detail them, as the fact was accepted by Mr. Tara Kant Jha) come to the aid of helpless students placed in the circumstances similar to the present petitioners.

34. So far as the other Supreme Court decisions are concerned, the observations in *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, , are clearly attracted. The petitioner in that case was allowed to sit at the Part I examination in Law of the University, but failed in three subjects. He was, however promoted to Part II and was entitled to appear in Part II examination under University statute after the close of the term along with subjects in which he was unsuccessful in Part I examination. He, therefore, applied for his roll number in order to re-appear in the said subjects but was refused permission. Since the Part II examination was scheduled to start shortly, the petitioner applied for provisional permission and gave an undertaking that if he was not able to cure a certain defect, he would abide by any order of the University and his prayer was allowed. Subsequently, the petitioner wrote to be University authorities that the defect which he had undertaken to cure did not apply to him and his result should be announced. The University in disqualified on other grounds including shortage in percentage of lectures. After unsuccessfully moving the authorities again, the petitioner filed a writ case in the High Court of Punjab and Haryana, which was dismissed. The petitioner then moved the Supreme Court. The University opposed the petitioner's appeal on several grounds, one of them being that in view of the statutory provisions, it was essential for a candidate to have attended a prescribed minimum percentage of lectures. Since this was not done, the petitioner's candidature was rightly cancelled with respect to Part 1 examination. The plea was rejected on the ground that under the relevant statute, this was permissible only before the examination. It was contended on behalf of the University that the names of the candidates who were short of percentage were displayed on the Notice Board of the college and although the petitioner was fully aware of the defect disqualifying him from the examination, he did not draw the attention of the University authorities and was, therefore, "guilty of committing serious fraud and was not entitled to any indulgence from"

the Court. The Supreme Court repelled the argument by pointing out that it was also the duty of the University authorities to scrutinise the position, and "if neither the Head of the Department nor the University authorities took care to scrutinise the application form, then the question of the appellant being a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved." The appeal was thus allowed. In the cases before me, I am assuming in favour of the respondents that the candidature of the petitioners for the examination in question could have been cancelled even later provided a case is made out for the exercise of such power. Admittedly, the authorities discovered the alleged infirmity in the candidature of the petitioners before the examination and, therefore, in my view, they cannot now ignore the appearance of the petitioners at the examination. Again, when the matter was re-examined by the University authorities in pursuance of the direction in Annexure 1 passed in the earlier writ case (C.W.J.C. 2147 of 1982) (Pat), they were under a duty to inform the petitioners of their decision and they communicated it by the letter, Annexure 2, saying that their results would be published on payment of additional fee of Rs. 25/- each. The additional fee was then deposited. I will now refer to the third stage in the chain of events. When the University asked the petitioners to move the High Court, as was done by the petitioners of the earlier case, did they mean that if the petitioners approached this Court, they would be fighting out the cases on hyper-technical grounds? In my view, the observations of the Supreme Court as mentioned above criticising the authorities are applicable.

35. I have arrived at the conclusion mentioned earlier on assuming that the case of the University that since 1978 private candidates cannot be permitted to sit at the examination is correct. The position, however, is disputed on behalf of the petitioners. Reliance was placed by Mr. Jha on Section 2 of the Bihar Act 21 of 1982, quoted in para 12 of the judgment of the Hon'ble Chief Justice. It is true that a ban is now imposed on unrecognised and unaffiliated institutions and it was necessary to do so in view of unscrupulous persons engaging themselves in misleading students to join institutions which were either fake or did not come to the required standard. But this does not answer the question as to whether private candidates could be permitted in the examination if they fulfilled the necessary conditions. It has not been suggested before us on behalf of the respondents that the petitioners were lacking in any of the qualifications which could have permitted them to sit at the examination as private candidates under the Regulations or any other relevant provision. Section 2 of Act 21 of 1982 does not deal with private candidates at all. The University has not placed before us the entire Regulations or the other relevant provisions, if any, and I am not able to persuade myself to agree with the University that in view of the provisions of Section 2 of Act 21 of 1982 it must be held that the University has been deprived of the power to admit private candidates at the examination on any condition or in any circumstances. Of course, the University must, if it so decides to permit private candidates, lay down appropriate conditions therefore and I am assuming

that the University must have done so before 1978, when private candidates were admittedly being allowed. On the merits of the claim of the petitioners also, therefore, I hold that on the basis of the scant materials produced on behalf of the respondents it is not possible to accept its case, and the petitioners' claim must be accepted.

36. For the reasons mentioned above, all the questions formulated by me in paragraph 24 above must be answered in favour of the petitioners. I, therefore, direct the University authorities to publish the result of the petitioners without any further delay. The writ applications are accordingly allowed with costs which are assessed at Rs. 500/- payable by the University.

S. Shamsul Hasan, J. (Concurring)

37. I entirely agree with Hon'ble the Chief Justice.