

(2002) 07 PAT CK 0090
In the Patna High Court
Case No : C.W.J.C. No. 1620 of 2002

Arun Kumar and Another

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

Bihar Intermediate Education Council Act, 1992 — Section 15, 15(1), 39, 41, 57
Representation of the People Act, 1950 — Section 27, 27(3)

Citation : (2002) 4 PLJR 67

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Pushkar Narain Shahi, for the Appellant; P.K. Shahi, for Union of India, V.N. Sinha, for State, J.P. Karn, for Commission, Subhash Chandra Jha, for Inter Council and Rabindra Prasad Singh, for Intervenor, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—There are two Petitioners before this Court who seek to challenge the instructions and directions issued by the State Government (Annexure 14), the Election Commission of India (Annexure 15) and the Chief Electoral Officer, Government of Bihar (Annexure 17) on the issue of preparation of electoral roll for elections to teachers' constituency in the legislative council of the State.

2. This writ petition was filed when the electoral roll was still under preparation and the election was yet to be held. During the pendency of this writ petition, the election from the teachers' constituency was duly held. But Mr. P.N. Shahi, learned Counsel appearing for the Petitioners submitted that that would not render this writ petition infructuous because in view of the Supreme Court decision in Shyamdeo Pd. Singh Vs. Nawal Kishore Yadav, it was not open to the Petitioners to challenge the election of the elected candidate on the plea of any irregularities in the electoral roll. The Petitioners, therefore, proposed to pursue this writ petition so that atleast in future the same mistakes and errors may not be repeated and the next election may atleast be held on the basis of a proper

electoral roll.

3. Part IV of the Representation of the People Act, 1950 deals with electoral rolls for council constituencies and Section 27 in that chapter contains the provisions for preparation of electoral roll for council constituencies. Section 27(3)(b) which is relevant for the present is as follows:

27(3) For the purpose of elections to the Legislative Council of the State in the graduates" constituencies and the teachers" constituencies, the State Government concerned may, with the concurrence of the Election Commission, by notification in the Official Gazette, specify-

(b) the educational institutions within the State not lower in standard than that of a secondary school.

4. In exercise of the powers u/s 27(3)(b) of the Representation of the People Act, 1950, the State Government had earlier issued a notification, dated 22.10.1986. The Schedule to the notification contained a list of the educational institutions which were deemed to be not lower in standard than that of a secondary school. The entry at serial No. 20 of the schedule was "Janta colleges". It does not need much imagination to see that the entry was quite vague and loosely (silo-loosely?) worded.

5. In the next notification, dated 27.11.96 (Annexure 2) issued u/s 27(3)(b) the Act and published in the official gazette of 21.2.1996, the lacuna in the previous notification was sought to be remedied and the entry at serial No. 20 more precisely worded in the following terms:

Intermediate college recognized by the Bihar State Intermediate Council for which prior approval of Government has been accorded.

6. In this writ petition, we are concerned with the above quoted entry in the notification, dated 27.11.1996/2.12.1996.

7. Mr. Shahi strongly contended that the manner in which the earlier entry in the previous notification was corrected and was substituted by expressions used in the Bihar Intermediate Council Act, 1992 clearly indicated that the entry in its present form covered intermediate colleges duly recognised by the Bihar Intermediate Education Council on being granted prior approval by the State Government as provided in Section 15(i) read with Sections 39 and 41(iv) of the Bihar Intermediate Education Council Act, 1992.

8. Learned Counsel invited my attention to Section 15(i)(b) of the Bihar Intermediate Council Act which enumerates as one of the powers of the Council "to grant, on previous approval of the State Government, or refuse recognition to the institution of intermediate (plus two standard)".

9. Mr. Shahi further submitted that it was precisely in this way that the entry was understood by all, including the concerned authorities in the State Government and in the office of the Chief Electoral Officer, Bihar. He made a reference to

several documents contained in Annexures 4, 10, 11 and 12 in support of the submissions that the entry was understood to mean intermediate colleges recognized by the Council on the basis of prior approval by the State Government. Mr. Shahi pointed out that the last of these annexures (Annexure 13) was a letter, dated 20.11.2001 issued by the Secretary to the Government in the Department of Secondary Education addressed to the Chief Electoral Officer, Government of Bihar. In this letter only seven intermediate colleges were identified as being recognized by the Council and instructions were accordingly given to include the names of only teachers of those colleges in the electoral roll for the teachers' constituencies.

10. Barely four days later, another letter was issued on 24.11.2001 (Annexure 14, one of the impugned letters) in which the Government made a turn around and gave directions that for the purpose of election the teachers of all the 462 intermediate colleges which were granted recognition by the Council under the successive ordinances, which were in force from time to time before the 1992 Act came into force, would also be considered eligible for being included in the electoral roll for the teachers' constituencies. The instruction issued by the State Government was concurred by the Election Commission of India vide letter, dated 24.1.2002 (Annexure 16, another impugned letter) and finally the Chief Electoral Officer went further ahead and by letter, dated 24.1.2002 gave the direction that for the purpose of inclusion of a teachers' name in the electoral roll, it need not be investigated whether he worked on a sanctioned or an unsanctioned post.

11. Mr. Shahi submitted that before the 1992 Act came into force, the Council used to grant recognition, under the successive ordinances, even to colleges whose genuineness could not be said to be free from doubt, for one, two or three sessions. He invited my attention to Annexure 3 which is a sample list of some such colleges which were granted recognition in either Arts, Commerce or Science for one or two sessions at the time when the different successive ordinances were in force. Learned Counsel submitted that the impugned instructions and directions will open the gates for inclusion of teachers of the so-called colleges whose very existence was open to doubt and would burden the electoral roll with teachers of dubious colleges.

12. Mr. Shahi forcefully submitted that the impugned instructions and directions contained in Annexures 14, 16 and 17 were plainly contrary to the provisions of Bihar Intermediate Education Council Act, 1992 and hence, were also in derogation of entry 20 of the notification, dated 27.11.96/ 2.12.96. Learned Counsel further submitted that the reliance placed by the State Government and the Intermediate Council on Section 57 of the Intermediate Council Act was quite misplaced. Section 57(1) contained the provision repealing the earlier ordinances and Section 57(2) contained the usual saving clause which provided that notwithstanding the repeal anything done or any action taken under the previous ordinances would be deemed to have been done or taken in the exercise of powers conferred by the Act.

13. Mr. Shahi pointed out that the 462 colleges were granted affiliation for only one or two sessions and, therefore, Section 57(2) of the Act would not revive their recognition by the Council and in point of fact neither the State Government nor the Council treated those colleges as recognized by the Council on the basis of a prior approval granted by the Government as provided in Section 15(1)(b) of the Act.

14. At the first instance the submissions made by Mr. Shahi appear to be reasonable and even attractive but on a closer examination those are clearly unacceptable. The fallacy in the submissions lie in looking at notification issued u/s 27(3)(b) of the Representation of the People Act, 1950 through the prism formed by the provisions of the Bihar Intermediate Education Council Act. It must not be lost sight of that the two Acts, one a Central legislation and the other a State legislation operate in two entirely different fields. The object and purpose of the Bihar Intermediate Education Council Act, 1992 is as follows:

An Act to establish Intermediate Education Council for the purpose of bringing uniformity in Intermediate Education in the State of Bihar for establishing co-ordination between different institutions managing the Intermediate Education, separating Intermediate Education from the Universities and for proper conduct, management and control of educational institutions of this standard.

15. It is, therefore, plain and clear that the object of the Act is to regulate and control the intermediate level education in the State.

16. On the other hand, the object and purpose of the Representation of the People Act, 1950 is as follows:

An Act to provide the allocation of seats in and the delimitation of constituencies for the purpose of election to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union Territories, and matters connected therewith.

17. It, therefore, follows that in giving effect to a notification issued u/s 27(3)(b) of the Representation of the People Act, 1950, the meaning and scope of the entry in the notification cannot be circumscribed on the basis of the provisions of the Intermediate Education Council Act.

18. If the matter is seen in its correct perspective, the proper question to ask would not be whether the impugned instructions and directions are contrary to the provisions of the Intermediate Education Council Act but the correct question to ask would be whether the impugned instructions and directions can be said to be violative of the provisions of Section 27(3)(b) of the Representation of the People Act. When the correct question is posed, one would get the correct answer which would be obviously in the negative. The impugned directions and instructions only envisage the inclusion of names of teachers who are working in colleges which may not be recognized within the meaning of Section 15(1)(b) of

the Intermediate Education Council Act but where the work of teaching goes on and which were granted recognition by the Council at least for some sessions. It is another matter that the students of those colleges cannot appear directly in any examination conducted by the Council. But that would not affect the status of the teachers of those colleges at least for the purpose of Section 27(3)(b) of the Representation of the People Act.

19. Mr. Shahi lastly submitted that in preparation of the electoral list a number of other irregularities were committed and names were included of persons who were not teachers at all or names of some individuals occurred at more than one places in the electoral rolls. Those are matters of factual detail and in case such irregularities have taken place in the making of the electoral roll, it would be open to the Petitioners to raise objections regarding individual cases before the concerned electoral authorities. In case such objections are raised and irregularities are pointed out the concerned authorities will be obliged to examine the matter and to pass appropriate orders in that connection.

20. For the reasons discussed above, I see no merit or substance in the challenge to the impugned instructions and directions as contained in Annexures 14, 16 and 17. This writ petition, therefore, fails and stands dismissed but with no order as to costs.