

**(2023) 06 PAT CK 0051**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 8204 Of 2023

Association Of Private Nursing And Paramedical Institution

APPELLANT

Vs

State Of Bihar

RESPONDENT

**Date of Decision :** 13-06-2023

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 19(1)(g), 21

Bihar University of Health Sciences Act, 2021 — Section 4, 4(3), 28, 29, 30, 45(3)

**Citation :** (2023) 06 PAT CK 0051

**Hon'ble Judges :** Purnendu Singh, J

**Bench :** Single Bench

**Advocate :** Mrigank Mauli, Kalpana, Sumit Shekhar Pandey, S.D. Yadav, Anil Kumar Verma

**Final Decision :** Disposed Of

## Judgement

1. Heard Mr. Mrigank Mauli, learned Senior Counsel assisted by Ms. Kalpana, learned counsel appearing on behalf of the petitioner and Mr. S.D. Yadav, learned AAG-9 assisted by Mr. Anil Kumar Verma, learned AC to learned AAG-9 for the respondent/s.

2. The present writ petition has been filed for following reliefs:

“(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the important notice dated 27.04.2023 issued by the concerned authorities under Bihar University of Health Sciences, Patna (hereinafter referred to as “the University”), by which purportedly in furtherance of the provisions contained under the Bihar University of Health Sciences Act, 2021, all the Non Government Medical Colleges, Dental Colleges, Pharmacy Institutions, Ayush, Nursing and Para Medical and other institutions relating to the field of health sciences, which are self financed situated in the State of Bihar and run by Societies Trust have been directed to submit applications forms for grant of affiliation from the University and accordingly, instructions have been issued for the purposes of making payment of the requisite fees for such purpose by

31/05/2023;

(ii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the University and also the Health Department of the State Government to allow such Non Government Medical Colleges, Dental Colleges, Pharmacy Institutions, Ayush, Nursing and Para Medical and other institutions situated in the State of Bihar to continue with their affiliations with the universities from which they are affiliated at the present and accordingly, allow such institutions to function in accordance with law and also to allow admission and examination of students admitted in such institutions in accordance with law;

(iii) Issuance of a declaration holding that in absence of statutes and regulations having been framed in furtherance of the provisions contained under Bihar University of Health Sciences Act, 2021, the instructions contained under the important notice dated 27/04/2023 are completely misconceived and unenforceable in the eyes of law;

(iv) Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case."

3. Learned counsel appearing on behalf of the petitioner is aggrieved by an advertisement issued by Bihar University of Health Sciences, Patna (hereinafter referred to as 'the University') which was established as per the provision of the Bihar University of Health Sciences Act, 2021 (hereinafter referred to as the 'Act'). The said Act was published in gazette notification being Bihar Act 19 of 2021 and came into effect from 09.08.2021. Pursuant to the said provision of the Act, the University came out with an advertisement dated 27.04.2023 published in newspaper inviting application from all the Non Government Medical Colleges, Dental Colleges, Pharmacy Institutions, Ayush, Nursing and Para Medical and other institutions relating to the Health Sciences. All these institutions are self financed situated in the State of Bihar and run by the Societies, Trusts and are presently affiliated with the Aryabhatt Knowledge University, Bihar.

4. Mr. Mrigank Mauli, learned senior counsel appearing on behalf of the petitioner submitted that even after enactment of the Bihar University of Health Sciences Act, 2021 and its coming into force from 09.08.2021, the State Government as well as the University has failed to frame statute, regulations and rules as per the provisions of the Act and as such the Act has become unworkable. He submitted that the institutions being member of the Association have made huge investment on infrastructure and faculty and are running on their own expenses after generating internal finances will be put at great loss if the fresh students are not allowed to take admission. He further submitted that Indian Nursing Council has published schedule of admission for academic year 2023-24 and B.Sc Nursing vide notification No. 05 of 2023 under the signature of Secretary giving the academic schedule for the examination for academic year 2023-24.

5. Learned senior counsel in above background submitted that all the members

of the petitioner's Association are affiliated with the Aryabhata Knowledge University and in terms of the academic calendar issued by Indian Nursing Council for the academic year 2023-24 particularly with respect to BSC Nursing as almost all the members of this association are running Nursing Institute may be allowed to admit the students as per the academic calendar for the present academic year that is 2023-24 taking into consideration that all the colleges are already affiliated with the Aryabhata Knowledge University.

6. Mr. Mrigank Mauli, learned Senior Counsel in support of his submission that in absence of any Statute and Regulation under Sections 28 and 30 of the New Act would remain unworkable as no mechanism as on date is provided for framing statute, rules and regulations he has referred to the provision of sub section 3 of Section 4 of Bihar University of Health Sciences Act, 2021:

"4. (3). Notwithstanding anything contained in any other State laws for the time being in force, the Colleges or Institutions as may be specified by the State Government, by notification in the Official Gazette, imparting Professional education in different streams of Health Sciences and affiliated by any other University established by law of the State Legislature shall cease to be affiliated from the University to which such Colleges or Institutions have been affiliated and such Colleges or Institutions shall be deemed to be affiliated to the University from such date as specified in the said notification.

Provided that this provision shall not be applicable to Deemed Universities."

7. He further submitted that even though such legislation has been brought into existence and the failure on the part of the State Government as well as the University as on date in not framing rules and regulations including the statute the Members of the petitioner's association cannot be forced to obtain affiliation from the newly created University, considering the fact that the schedule of admission process for academic year 2023-24 has been announced. The members of petitioner's association have made huge investment on infrastructure as well as they have to incur huge amount on account of salary of the teaching and non-teaching staffs. The gap of one session will cause huge loss, inspite of the fact, that they meet all the requirement and granted affiliation by Aryabhata Knowledge University. Learned Senior Counsel has also referred to 'Annexure-4' to draw attention that for a single subject, the newly established University has prescribed affiliation fees faculty-wise. The learned counsel in above background seeks that the members of petitioner association be allowed to continue as an affiliated unity of the Aryabhata Knowledge University at least for academic session 2023-24.

8. At this stage, a suggestion has come from learned Additional Advocate General, Mr. SD Yadav, who has tendered his appearance on behalf of the respondent nos. 2 to 4, as well on behalf of the State, has on instruction suggested that it is admitted that the Act has come into existence from 09.08.2021, and no Statute, Regulation or Rules have been framed and seeks for

some time on behalf of the respondent-Universities as well as the State Government so that Statute, Rules and Regulation can be framed within stipulated time for admission of the students and running of the institutions in accordance with the provision of the Act, 2021 and to follow the academic schedule prescribed by the Indian Nursing Council. He submitted that he has received instruction on behalf of the State Government and the University that within a period of two months such exercise will be completed and Statute, Rules and Regulation will come into existence to make the Act workable. In these background he submitted that in the meantime, the members of the petitioner's Association may apply for getting affiliation with the newly established University seeking admission for the academic year 2023-2024 from prospecting candidates eligible to pursue nursing course in the different institutions, who are member of the association.

9. Heard the parties.

10. This Court has given a conscious regard to the provisions of the Act, 2021 as well as the schedule prescribed by the Indian Nursing Council and has also taken into consideration the rival submission made by the respective counsels appearing on behalf of the petitioner and respondent, finds that the Bihar University of Health Sciences Act, 2021 has come into existence. Some time is required to the State Government as well as the newly established University to arise from its deep slumber and frame rules, regulation including the statute to make the Act workable preferably within a period of two months. This Court also finds that as per the schedule which has been prescribed by Indian Nursing Council for Academic Session 2023-24, communicated vide Notification No. 05 of 2023 dated 06.04.2023, the entrance test has been prescribed to be conducted for taking fresh admission in different course is to start from 15.06.2023 and the academic session has been prescribed to commence from 01.08.2023 and the last date of admission has been prescribed on 30.09.2023.

11. Admittedly, the Act has come into force from the date of its publication in the gazette notification dated 9th August, 2021. In Sub-Section 3 of Section 4, the word has been preceded by non-obstinate clause. The jurisdiction of the University shall extend to the whole of the State of Bihar. The college or institutions imparting professional education in different streams of health sciences and affiliated by any other university by law of the state legislature shall cease to be affiliated from the university to which such colleges or institutions have been affiliated and such colleges or institutions can be deemed to be affiliated from the university from such date as specified in the said notification. It would be relevant to reproduce Section 4 of the new Act.

"4. Jurisdiction:-

(1) The jurisdiction of the University shall extend to the whole of the State of Bihar.

(2) All colleges and institutions established by the Government and affiliated to

the existing Universities of the State or to be established in future imparting Professional Education in different streams of Health Sciences shall be eligible for affiliation with the University from such date as the Government may, by notification in the official Gazette appoint, and in the manner prescribed by the Statutes or Ordinances or Regulations made in this regard.

(3) Notwithstanding anything contained in any other State laws for the time being force, the Colleges or Institutions as may be specified by the State Government, by notification in the Official Gazette, imparting Professional education in different streams of Health Sciences and affiliated by any other University established by law of the State Legislature shall cease to be affiliated from the University to which such Colleges or Institutions have been affiliated and such Colleges or Institutions shall be deemed to be affiliated to the University from such date as specified in the said notification.

Provided that this provision shall not be applicable to Deemed Universities. (emphasis supplied)

(4) The University may impose such terms and conditions upon the colleges or institutions as it may consider necessary, conducive or incidental to the attainment of all or any of the objects of the University and then grant affiliation.

(5) Existing college or institution set up by a Trust or a Society as a self-financing institution imparting Professional Education in different streams of Health Sciences may get affiliated with the University subject to fulfillment of conditions laid down under Statutes and Regulations made in this regard. (emphasis supplied)

(6) Any privilege, enjoyed from any other University before the appointed day by any Medical College or institution of Health Sciences situated in this State, shall be deemed to be withdrawn with effect from such date as may be notified by the Government. (emphasis supplied)”

12. The section 28 of the New Act provides for power to make statute, Section 29 provides for the statute, how made and Section 30 provides for power to make regulation. As per Sub-Section 3 of Section 4 of the Act, the Act will prevail over other Acts. Even though the regulation has not been framed which provides for mechanism for running of the institutions including its general affairs. Section 45 provides for transitional provisions but the same does not provide for new admission although Sub-Section 3 of Section 45 provides for student, who immediately before the date of affiliation to the university was studying or was eligible for any examination of the other university shall be permitted to complete the course. Sub-Section 3 of Section 45 is reproduced hereinafter:-

“45. Transitional Provisions:-

(3) Notwithstanding anything contained in this act or the regulations, any student of a college or institution affiliated to other University, who immediately before the date of affiliation to the University, was studying or was eligible for

any examination of the other Universities shall be permitted to complete this course in preparation thereof and the University shall provide for such period and in such manner as may be prescribed for the instruction, teaching, training and examination of such students in accordance with the course of studies of the other University.”

13. It is well settled principle of law that where statute confers power on an authority to do certain act or acts or exercise power in respect of certain matters, the power is required to be exercised in manner prescribed under the statute. The State has not taken the plea that steps have been taken to publish statute and regulation in manner prescribed under Sections 28 and 30 of the New Act has lead the New Act unworkable.

14. This Court finds that it is not only negligence on the part of the State Government and the University at the same time the petitioner association has also delayed in approaching this Court. The present writ petition has been filed on 09.06.2023. The schedule was announced by Indian Nursing Council on 06.04.2023 and the newly established university had announced requiring affiliation by public notice in newspaper on 27.04.2023. (Annexure-3)

15. This Court finds that petitioner is an association and its members are running nursing institutions whose main objective to impart right nursing to students to learn clinical practice. The interest of prospective candidates, who want to pursue the nursing degree is therefore become of paramount importance. It would be proper that State Government as well as the University should come out with the rules, regulation and statute forthwith as already the commencement of academic session for the academic year 2023-24 has been prescribed to start from 01.08.2023 and last date of the admission has been prescribed 30.09.2023 so that the colleges can hold entrance test and commence the academic session from 01.08.2023.

16. It is settled law as on date that the importance of right to education and opportunity to acquire knowledge and higher education has been held to be fundamental right, however, right to acquire professional degree is not covered by Article 21, even though the case falls within the ambit of Article 19 (1)(g) and Article 14 of the Constitution. There are number of decisions in which the right and opportunity to higher education is treated as falling within the scope and ambit of Article 19(1)(g).

17. The Apex Court while emphasizing on the importance of professional education in case of Farzana Batool v. Union of India and Others reported in 2021 SCC OnLine SC 3433, has held inter alia as follows:

“ 9. Given that the issue raised in this case concerns access to education, albeit at the professional level, we would like to take this opportunity to underscore the importance of creating an enabling environment to make it possible for students such as the petitioners to pursue professional education. While the right to pursue higher (professional) education has not been spelt out as a fundamental

right in Part III of the Constitution, it bears emphasis that access to professional education is not a governmental largesse. Instead, the State has an affirmative obligation to facilitate access to education, at all levels.

10. This obligation assumes far greater importance for students whose background (by virtue of such characteristics as caste, class, gender, religion, disability and geographical region) imposes formidable obstacles on their path to accessing quality education. Indeed, as the Committee on Economic, Social and Cultural Rights ("ICESCR Committee")<sup>1</sup> notes in General Comment 13, "As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities".

11. Article 26(1) of the Universal Declaration of Human Rights, which is a source of persuasive value, obligates every State Party to ensure that technical and professional education is made generally available and that higher education is equally accessible to all on the basis of merit. In its General Comment 13, the ICESCR committee outlined four essential features that education at all levels must possess. Pertinently, one such feature is 'accessibility'. Two of the components of accessibility highlighted by the \ICESCR Committee bear emphasis. First, the guarantee of non-discrimination, in relation to which it notes that, "education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds". Second, economic accessibility, meaning that the state party must take steps to ensure that financial constraints do not come in the way of accessing education."

18. This Court has been made aware that the State Government as well as the newly established university will take some time in framing of the statute as well as regulation to make the Act workable. Submission has been made on behalf of the University and the State by learned Senior counsel appearing on behalf of the respondents that same will be done within two months without considering that the Indian Nursing Council has already announced the schedule of admission for the Academic Session 2023-24- B.Sc.(N) which is reproduced hereinafter:

"NOTIFICATION-5 of 2023

Schedule of Admission for the Academic Year 2023-24 -B.Sc.(N)

Refer Gazette Notification on "Revised Regulations and Curriculum for B.Sc. (Nursing) program, Regulations, 2020" dated 05.07.2021. As per Regulation No 8 Note (ii) and (iii), it is stated that the commencement of session of B.Sc.(N) program shall be 1st August & the last date of admission shall be 30th September of every year.

For the academic year 2023-24

-Entrance test to be conducted before – 15th June 2023

-Commencement of Academic Session- 1st August 2023

-Last date of admission-2023- 30th September

Admission to B.Sc.(N) during the academic year 2023-24 shall be through Common Entrance Examination by State Government Common Entrance Cell/ Universities. Admission terms & conditions of the candidates along with the criteria for entrance examination is given in the revised B.Sc.(N) syllabus and shall be strictly adhered to."

19. This Court in a peculiar facts and circumstances of the case directs the newly established University and the State Government to enact and publish statute and regulation as provided under the Act not beyond a period of 30 days and hold entrance examination within further period of 15 days after the publication of the statute and regulation and thereafter, follow the academic schedule as contained in Notification No. 05 of 2023 issued by Indian Nursing Counsel.

20. The Notification No. 05 of 2023 has been modified considering the vital right of the candidates aspiring for pursuing the nursing degree and other courses in a State where there is very poor infrastructure of health services, to allow them to take entrance test as per the schedule prescribed by the Indian Nursing Counsel and may not suffer for any laches on the part of the State Government as well as the University

21. This Court in peculiar facts and circumstances of the case, modify the schedule prescribed by the Indian Nursing Counsel for holding entrance test be conducted from 15th June, 2023 by extending the same to some other date not beyond a period of 45 days as per the convenience of the newly established University and the State Government and will publish Statute and Regulation well within one month taking into consideration that in any case, the academic session must start from August, 2023.

22. The State Government as well as the University must abide to follow the schedule duly modified by this Court order within one month by extending the date of entrance test during which period the State Government and the University must notify the Rules and Regulations including the Statute. In case of failure the affiliation fees, in terms of the fees prescribed in 'Annexure-3' for affiliation with B.U.H.S., Patna deposited by the Members of the Association for imparting nursing course must be returned with statutory interest within a period of 15 days. This Court has taken into consideration the fact that the colleges must not be left inoperative as they are already affiliated with the Bihar Aryabhatta Knowledge University. The Aryabhatta Knowledge University, must consider to hold examination for admission of fresh students in terms of the modified schedule prescribed by this order in case of failure of the State Government and the B.U.H.S. University.

23. It is made clear that order has been passed in the open Court in the presence of the learned senior counsel for the petitioner and the learned AAG-9,

the University and the State Government must not wait for pronouncement of the present order to act forthwith. It is expected that Mr. S.D. Yadav, learned Additional Advocate General will communicate the order to the Additional Chief Secretary, Health Department and Vice-Chancellor of the newly established University.

24. With above observations and directions, the present writ petition is disposed of.