
(1989) 11 PAT CK 0023
In the Patna High Court
Case No : C.W.J.C. No. 4976 of 1989

Bhagwat Azad

APPELLANT

Vs

Lalit Narayan Mithila University and Others

RESPONDENT

Date of Decision : 29-11-1989

Acts Referred:

Bihar State Universities Act, 1976 — Section 60, 60(1), 60(4)

Citation : (1990) 1 BLJR 190 : (1990) 2 PLJR 160

Hon'ble Judges : S.B. Sanyal, J; R.N. Lal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.B. Sanyal and R.N. Lal, JJ.—This writ petition is for quashing the latter order dated 5.4.1989 (Annexure-8) by which the Registrar, Lalit Narayan Mithila University has constituted a new ad hoc Committee for governance of Bhagwati Mandir College, Katihar superseding the earlier ad hoc Committee constituted on 17.9.87 of which the petitioner was the sponsor-convenor, which, according to the learned Counsel for the petitioner is violative of the direction of the Chancellor dated 15th April, 1988 (Annexure-9) as also a Division Bench decision of this Court in C.W.J.C. No. 5829 of 1986, disposed of on 20th May, 1988.

2. Mr. Basudeo Prasad, senior Advocate, appearing on behalf of the petitioner submits that the College was established by a big donation of Bhagwati Mandir Trust Committee in the backward area of Katihar and the college was being governed by Bhagwati Mandir Trust Committee. Subsequently, a Governing Body of 15 members including the petitioner was constituted sometime in the year 1982. The College came to possess 65 acres of land and a good library and sufficient number of teachers for imparting education. The college was affiliated sometime in the year 1987 after due inspection by the university authorities upto B.A. and B.Com pass course. It is said that the petitioner asked the University to constitute a governing body, but the University instead of constituting a governing body, constituted an ad hoc Committee as step-aid to

the constitution of a regular governing body, in June 1987 of which the writ petitioner was the sponsor-convenor member. Curiously, according to the learned Counsel, for no valid reason instead of constituting a regular governing body, new ad hoc Committee was substituted on 5.4.1989 by dropping the petitioner as a member of the said Committee. In that new ad hoc Committee a social worker and a professor incharge of the college were included by giving a go-by to the donor-member and/or the sponsor of the College. It has been averred that this has been done without any valid reason or cause, even though the old ad hoc Committee was functioning satisfactorily and has brought about great progress of the college.

3. A counter-affidavit has been filed both on behalf of respondent No. 4, the University as well as by respondent No. 5 Sri Jai Kishun Yadav, who claims to be the donor of Rs. 51,000 in the formation of the college. In his counter-affidavit respondent No. 5 has alleged many acts of omission and commission on the part of the petitioner so much so as a Secretary of the Committee he was keeping the college fund in his personal account. It has also been averred that he was acting to the detriment of the interest of the college and there was a general murmur by the prominent citizens of the place. It has further been stated that since 15.11.1986 the petitioner has never worked even for a single day as a Secretary of the college as in the proceeding of the meeting held on 15.11.1986 he was removed by the general body. Upto 29.6.1987 the college was being run by the governing body of which the petitioner was neither a member nor a Secretary, but surreptitiously the petitioner wrote a letter describing himself as a Secretary for the constitution of an ad hoc Committee of the college after its affiliation, even though he knew that on 29.6.87 he was not the Secretary of the College, and the university without examining the matter and/or noticing the new governing body constituted an ad hoc Committee of which the petitioner was made the convenor. When this fact was known to the people and the other members of the staff, there was a great resentment, because a person, who had been removed by the governing body from the post of Secretary for his omission and commission including misappropriation of college fund had been included as a member of the ad hoc Committee by the University in exercise of the power conferred u/s 60(4) of the Bihar State Universities Act (hereinafter referred to as "the Act"). On a representation filed, the University got the matter examined and the affairs of the College inspected. An Additional Collector after having authorised by the District Magistrate, Katihar, also enquired-into the allegation against the petitioner. An elaborate inspection report was submitted by the University representative on 7.2.1989 who suggested that the ad hoc Committee of which the petitioner was made the Convenor be replaced because of allegations of grave nature against him which were prima facie found to be true. The University after consideration of the said report constituted a new ad hoc Committee till the regular governing body is properly constituted.

4. The stand taken by the University is that the constitution of the new ad hoc Committee on 5.4.1989 is a purely stop gap arrangement since the formation of

a regular governing body u/s 60 of the Act as amended up-to-date takes sometime in completing the various mandatory procedures. It has further been averred that the ad hoc Committee constituted in June, 1987 was not properly managing the affairs of the College and there was a lot of mismanagement of the fund of the College affecting the excellence of education and, therefore, the old ad hoc Committee had to be immediately reconstituted after receipt of the inspection report on 7.2.1989 without allowing further deterioration in the affairs of the College. However, steps are being taken for the constitution of a regular governing body.

5. Having heard learned Counsel for the parties as also having perused petition, counter-affidavits and reply to the counter-affidavit, we are of the opinion that the new ad hoc Committee constituted on 5.4.1989 vide Annexure-8 should be allowed, in the facts and circumstances of this case, to manage the affairs of the College till the Governing Body is constituted by the University. It is true that u/s 60(1) of the Act once affiliation is extended to a College, the University is required to constitute a regular governing body, but the University is also empowered to constitute an ad-hoc Committee u/s 60(4) of the Act till such time the Governing Body is constituted. There is nothing in Section 60 of the Act which debars the University to re-arrange and reconstitute an ad-hoc Committee if some members of the Committee indulge in misfeasance and misappropriation. Ordinarily, if the ad-hoc Committee is properly functioning to the satisfaction of all, the University must forbear from substituting one ad-hoc Committee by another and so on so forth, thus allowing the management of the College to be governed by ad-hoc Committee without fulfilling their obligations and mandate to form a regular governing body. The object of Section 60(4) of the Act is to give the University some breathing time for the constitution of a regular Governing Body. In C.W.J.C. No. 5829 of 1986, disposed of on 20th May, 1988, this Court was dealing with the constitution of a third ad-hoc Committee and in that context this Court observed that under "the Act read with the relevant statute framed by the University" successive ad-hoc Committees cannot be constituted for management of an affiliated College." In that case the plea taken by the University was with respect to the dispute about the election of the donors, which, according to this Court, should not be a ground for delaying the constitution of a regular governing body and there was a direction given for constitution of the governing body within the time framed even by keeping one seat vacant for the person elected amongst the donors. This was not a case where the members of the ad-hoc Committee were mismanaging the affairs which led to its substitution by another Committee. The ratio of the said decision is; ordinarily the University is to complete the constitution of a governing body as expeditiously as possible after its affiliation instead of resorting to successive ad-hoc Committees for the governance of the college. It is not an authority that once an ad-hoc Committee is constituted the University is debarred for ever to substitute the old ad-hoc Committee by another ad-hoc Committee. No such limitation can be read in Section 60(4) of the Act. There may be situation and

situation, where the University may be required to substitute an ad-hoc Committee by another, such as, in the present case. The direction given by the Chancellor in Annexure 9 to the effect that the Governing Body should be constituted within three months of the issuance of the letter dated 15th April, 1988 is not mandatory but directory. As it appears, it voices the need of any constitution of the Governing Body. The judgment of this Court also the direction of the Chancellor to give effect to the true spirit of Section 60 of the Act i.e. affiliated colleges are required to be governed u/s 60(1) and not u/s 60(4), the later only confers right to have a stop gap arrangement and not a permanent arrangement. But, there may be a situation of the kind noticed in this case where the university may be constrained to substitute an ad-hoc Committee by another ad-hoc Committee, since the constitution of a regular Governing Body could not be finalised for some compelling circumstances. We are, therefore, of the opinion that the decision taken by the University vide Annexure-8 cannot be interfered with and the College for the present has to be allowed to be governed by the ad-hoc Committee constituted on 5.4.1988.

6. This, however, does not mean that we have approved the delay in the formation of the Governing Body of the College by the University. The University accorded affiliation of the College as far back as on 6.3.1987 and it allowed two years to roll by in discharging the duties and responsibilities enshrined u/s 60 of the Act. This is not appreciated by us. We, therefore, direct the University to constitute a Governing Body within three months from the date of receipt of our order, even by keeping vacant some category of members, if there be any dispute in relation thereto. In short, we mean that a dispute of any sort with respect to inclusion or exclusion of members in forming the governing body must not deter the University to constitute a Governing Body even by keeping vacant the membership of such categories of members.

7. In the result, the writ petition is dismissed. The Stay Order is vacated and the College will be governed by the ad-hoc Committee constituted on 5.4.1988 for the present and the University is directed to constitute a regular Governing Body within three months from the date of receipt of this order, bearing in view the directions and observations of above.