

(2022) 03 PAT CK 0062

In the Patna High Court

Case No : Letters Patent Appeal No. 387 Of 2019 In Civil Writ Jurisdiction Case No. 14130 Of 2017

Bihar School Examination Board (Senior Secondary)

APPELLANT

Vs

Jagdhara Ray Uchhattar Madhyamik Vidyalaya

RESPONDENT

Date of Decision : 03-03-2022

Acts Referred:

Bihar School Examination Board Act, 1952 — Section 10B, 10C
Bihar School Examination Board Act, 2019 — Section 19, 19(1), 20, 38
Bihar School Examination Board (Senior Secondary) Affiliation Regulation, 2011 — Regulation 11, 11(1), 14

Citation : (2022) 03 PAT CK 0062

Hon'ble Judges : Ashutosh Kumar, J; Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Satyabir Bharti, Prachi Pallavi, Abhimanyu Singh, Priyadarshi Matri Sharan, Sunil Singh

Final Decision : Disposed Of

Judgement

1. Heard Mr. Satyabir Bharti, learned Advocate for the appellant the Bihar School Examination Board and Mr. Sunil Singh for the respondent Jagdhara Ray Uchhattar Madhyamik Vidyalaya. The State is represented by Mr. Priyadarshi Matri Sharan.

2. A direction had been sought by the aforesaid school, namely, Jagdhara Ray Uchhattar Madhyamik Vidyalaya (hereinafter called the school) in the district of Vaishali to the Bihar School Examination Board to grant affiliation in its favour for Intermediate Science, Intermediate Arts and Intermediate Commerce courses from academic session 2017-19.

3. The learned Single Judge by his Judgment dated 19.09.2018, after examining the entire scheme of the Bihar School Examination Board Act, 1952 and the Bihar School Examination Board (Senior Secondary) Affiliation Regulation, 2011, found that once the affiliation committee of the Board recommends for grant of affiliation, the Board has no option in the matter and has to pass an order on the

basis of such recommendation of the committee of affiliation.

4. In the case of the respondent-school, there appears to be a favourable report of the affiliation committee for grant of affiliation by the Board but before any decision regarding affiliation could be taken by the Board, an order was issued cancelling such affiliation.

5. There is a history behind this litigation.

6. Many institutions desirous of being affiliated with the Bihar School Examination Board for running courses under various streams had preferred requisite applications and after the physical inspections of such schools, the affiliation committee of the Board had made recommendations in favour of those schools. Before the same could be considered by the Board for taking decision with respect to affiliation of such institutions, a Public Interest Litigation came to be filed in the High Court, bringing to the fore several inconsistencies and wrong recommendations and consequent wrong affiliations to even such schools which did not exist or which did not have the requisite infrastructure to make them eligible for affiliation.

7. During this period, the post of the Chairman of the Board also underwent a change.

8. The State of Bihar, during that period, had also witnessed lot of furore with respect to a scam of a forty years old person topping in the Board examination which had brought a bad name to the system of education in the State.

9. Forced by this, the current dispensation of the Board thought it appropriate to have a fresh inspection of such schools for taking a decision regarding affiliation of such institutions.

10. A five member team was constituted by the Board for making physical inspection of such schools, which submitted its report, which in essence was different from the recommendation of the Affiliation Committee. A stock decision was taken by the Board after the report that any affiliation granted to such schools which were not found to be having sufficient/requisite infrastructure be cancelled or the affiliation withdrawn. In the process, even when the affiliation to the respondent school had not been granted and the same was pending consideration, the name of the school fell in the list of such schools whose affiliation was also shown to have been cancelled on the basis of such inspection report.

11. A primary grievance was raised on behalf of the respondent school that before any affiliation could be granted to an institution, there was no occasion to pass any order cancelling or withdrawing the same.

12. Mr. Satyabir Bharti, learned Advocate for the Board admits that when such orders were being passed by it with respect to many schools which were found to be deficient in infrastructure and other facilities for them to be eligible for being

affiliated, some mistakes had crept and so was in the case of the respondent school.

13. Be that as it may, the learned Single Judge, on perusal of Section 10B and 10C of the Bihar School Examination Board Act, 1952 found that if any person was dissatisfied with the decision of the Affiliation committee constituted under Section 10B of the Act could prefer an appeal within thirty days of the communication of the decision before the State Government, which is the appellate authority and whose decision shall be final. The learned Single Judge noted the fact that there was no provision in Section 10B of communicating any favourable report of the committee to the school in question. With respect to the powers under 10C, the learned Single Judge was of the view that the Board had the power to grant or to withdraw affiliation of secondary and secondary senior schools established by the non-government organization but only on the basis of recommendation of committee of Affiliation constituted under Section 10B of the Act.

14. Only in cases of withdrawal of affiliation, the Board is enjoined upon to give to the school or the institution concerned a reasonable opportunity of being heard and the students admitted into such schools or institutions would have to be allowed to complete their academic session and appear at the next examination conducted by the Board.

15. This was not read to be the requirement with respect to grant of affiliation, which the learned Single Judge found was controlled and circumscribed by the report of the Affiliation committee only and not beyond.

16. Mr. Satyabir Bharti, learned Advocate for the Board has questioned the aforesaid interpretation on the ground that Section 10C provides the power to the Board to grant and withdraw affiliation and the power to withhold or refuse to grant recognition would inhere in the right to grant recognition or else the power of the Board would stand diminished to an extent that even its existence would be found to be superfluous.

17. It has been urged that a committee constituted by the Board cannot exercise the same powers of the Board and it would be too much to read that if the Board was required to rely on the recommendations of the Affiliation committee, the Board could not go beyond such recommendation. Based on the aforesaid logic, the learned Single Judge further observed that it was incumbent upon the Board to give the respondent school an opportunity to explain, if the Board was taking any different view over the recommendation of the Affiliation committee, which was in favour of the respondent school. The learned Single Judge also took exception to the constitution of special committee for the purposes of inspection of the schools on the sole premise that there is no such provision under the Act or the Regulation referred to above for constitution of any other inspecting team and this job had to be done by the Affiliation committee and by no other authority whatsoever.

18. We are of the considered opinion that this is a very restrictive reading of Sections 10B and 10C of the Bihar School Examination Board Act, 1952 and we do not approve of the same.

19. Regulation 11 of Bihar School Examination Board (Senior Secondary) Affiliation Regulation, 2011 provides for miscellaneous provisions with respect to the powers of the Board to get a school inspected for continuing with the affiliation or for taking a decision with respect to withdrawal or cancellation of such affiliation.

20. Sub-clause (1) of Regulation 11 provides that a school shall have to open itself to inspection by an inspection committee deputed by either the Board or the Education Department or the Health Department authorities. The concerned school has also been enjoined upon, under the aforesaid Regulation, to supply information and returns called for by the Board or the authorities mentioned in Sub-clause (1) of the Regulation with respect to the building and furniture; the records of attendance and the steps taken towards ensuring valued education with particular emphasis on national integration and so on and so forth.

21. Mr. Bharti has also drawn the attention of this Court to Regulation 14 under Chapter III of the Affiliation Regulation, 2011, which provides for the follow up action after submission of application for affiliation by concerned schools.

22. Before making any application for seeking affiliation, a school is required to fulfill essential requirements, which have been laid down in the Regulation. Such applications by the desirous institutions/schools is required to be examined, and if it is found by the Board that such school fulfills the essential conditions, an inspection committee is required to be appointed in order to assess the suitability of the school for affiliation with the Board for classes applied for. The aforesaid Regulation provides for an inspection of the school before any recommendation could be made by the affiliation committee constituted by the Board. Even with respect to the powers of the committee of Affiliation and its responsibilities, it has been provided in Regulation 14 that the inspection report, referred to above, along with the observations of the Board office would be placed before the Affiliation committee of the Board at its next meeting to decide whether the school be granted affiliation or not. The decision about grant of affiliation etc. is also required to be communicated to the school immediately after the approval of the Affiliation committee. Thus, the scheme of the Act of 1952 as well as the Regulation of 2011, referred to above, admits of an inspection even prior to the Affiliation committee taking a call with respect to recommending particular schools for affiliation. It was, thus argued that it was not correct for the learned Single Judge to say that the inspecting team so appointed by the Board was beyond its jurisdiction and powers.

23. Mr. Sunil Singh, learned counsel for the respondent school, however, submits that it would not be appropriate for the Board to mouth that the school in question did not have the eligibility for being recommended. Even if the power of

withholding of recognition is read in Section 10C of the Act, there was no justification for keeping the matter pending and not passing any order with respect to either grant of recognition or refusal to accept the recommendation of the report of the Affiliation committee. To add insult to the injury, without granting affiliation, the same appears to have been withdrawn or cancelled by the Board.

24. After having seen the scheme of the Act and the provisions of Regulation, 2011, we find that there are certain yawning wedges/chinks in the Act of 1952 which does not specifically provide for eventualities. At the same time, we do find that such powers could be read into the provisions of the Act of 1952. What has immediately caught our attention is the constitution of the Affiliation committee, which comprises the Chairman of the Board, the Secretary of the Bihar School Examination Board or his nominee and a person to be nominated by the Board. It appears to be rather unreasonable to us that the Board, which is headed by the Chairman, has to evaluate and accept the report of the Affiliation committee, which too is headed by the Chairman of the Board. The entire purpose of having different tiers for testing the eligibility of the schools/institutions for recognition thus falls to the ground.

25. It appears that these anomalies were noticed by the State Government and now a new Act, namely, Bihar School Examination Board Act, 2019 has been brought into existence, which has been notified on 30th of July, 2019.

26. We have noted that the decision of the Board was taken under the Act of 1952 and the order passed by the learned Single Judge is also of the period when the Act of 1952 was in currency.

27. Be that as it may, we find that no vested right has upto now been created in the respondent school as till date, no decision with respect to affiliation has been taken by the Board.

28. Under the new Act of 2019, Section 19 provides the power to grant and withdraw affiliation. Sub-clause (1) of Section 19 provides that such decision of the Board will be on the basis of the recommendation of the committee of Affiliation constituted under Section 20 of the Act. Provisions have been specifically made for the Board to withdraw, cancel or suspend the affiliation of the schools, which have been granted affiliation or which are deemed to have been granted affiliation with the Board or already affiliated institutions. Checks and safeguard have also been provided for countering indiscreet exercise of powers. What has been changed substantially under the new Act is the constitution of the committee of affiliation, which now is not headed by the Chairman of the Board but it comprises the Secretary of the Board, the Director of Secondary Education, Government of Bihar, the Director (academics) of the Board and the Chief Vigilance Officer of the Board.

29. We are of the considered view that the Act or the Regulation has to be understood and read in the context of the objectives of the Board, which

primarily is towards standardization and betterment of secondary education.

30. Section 38 of the Bihar School Examination Board Act, 2019 provides that notwithstanding the repeal of the earlier Act, anything done or any action taken in exercise of any power conferred by or under the said Act, shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act, as if this Act was enforced on the day on which such thing or action was done was taken.

31. It further provides that all proceedings pending or otherwise, immediately before the commencement of this Act, shall on such commencement be deemed to be proceedings pending under this Act and shall be dealt with accordingly under the provisions of this Act.

32. We have noticed that a decision with respect to grant of affiliation by the Board has yet not been taken.

33. Taking this aspect into account, we deem it appropriate to direct that in the event of the respondent school making a fresh application before the Board for seeking affiliation, along with necessary details, the Board shall have the school physically inspected by constituting an inspecting team under the Act and the Regulation thereof and shall place such report before the committee of affiliation for its recommendation. The decision of the Board shall not be delayed on any account as the respondent school has been running from pillar to post including the High Court for grant of recognition under the earlier Act.

34. The entire exercise shall be concluded within a period of three months from the date of application.

35. It is made clear that the respondent school shall not be made to deposit the compulsory amount as fee for submitting application for affiliation, which shall be adjusted against the earlier deposit made by the respondent school.

36. Any decision of the Affiliation committee or of the Board could be challenged by the school in an appropriate forum in case it is deemed necessary to do so.

37. However, since certain directions have been issued by the learned Single Judge with which we do not agree, we set aside the same and direct that the appellant Board shall promptly take up the matter after a fresh application, as directed, is filed by the respondent-school for affiliation.

38. The appeal stands disposed of accordingly.