

(2001) 08 PAT CK 0115

In the Patna High Court

Case No : L.P.A. No"s. 191, 576 and 577 of 2001

B.N. Mandal University and Others

APPELLANT

Vs

Mrigendra Kumar and Others and Pawan Prakash and Others

 The State of Bihar and Another Vs Pravin Chandra and
Others

RESPONDENT

Date of Decision : 07-08-2001

Acts Referred:

Bihar State Universities Act, 1976 — Section 30
Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 11(2)

Citation : (2001) 4 PLJR 25

Hon'ble Judges : P.N. Yadav, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Binod Krishna Jha, Uday Chandra Prasad, in L.P.A. Nos. 576 and 577 of 2011 and Mayanand Jha, in L.P.A. No. 191 of 2011, for the Appellant; Sadanand Jha, for College in L.P.A. Nos. 576 and 577 of 2011, Rajendra Pd. Singh, for Respondents 1 to 3 in L.P.A. No. 576 of 2011, Dharmeshwar Mishra and Harendra Tiwary for Respondents 1 to 10 in L.P.A. No. 576 of 2011, Respondents 4-5 in L.P.A. Nos. 191 of 2001 and 577 of 2011, for the Respondent

Final Decision : Dismissed

Judgement

1. All the three appeals are connected matters and as such they have been heard together and are being disposed of by this common order.

2. L.P.A. No. 576 of 2001 arises out of CWJC No. 4461 of 2001 filed by the writ Petitioner-Respondents, who are students of Katihar Medical College, Katihar (for short "the College"), for a direction to publish the results of the examinations held by the Appellant-B.N. Mandal University, Madhepura (for short "the University") in March, 2000. L.P.A. No. 577/2001 arises out of C.W.J.C. No. 4460 of 2001 filed by the writ Petitioner Respondents, who are students of the said College, for a direction to the Appellant-University and its officials to hold examinations as detailed therein. L.P.A. No. 191/2001 arises out of C.W.J.C.

13118 of 2000 filed by the writ Petitioner Respondents, who are students of the said College, for a direction to the Appellant-State and the Bihar Council of Medical Registration to grant provisional registration certificate to them from the date they had applied for doing their one year rotating internship after passing the M.B.B.S. examination.

3. The learned Single Judge, by the impugned orders, allowed all the said three writ applications. C.W.J.C. No. 13118 of 2000 was disposed of by order dated 18.1.2001 and a direction was issued to the Appellant-State in L.P.A. No. 191/2001 and the Bihar Council of Medical Registration to give provisional registration to the students doing one year internship. The other two writ applications (C.W.J.C. Nos. 4460/2001 and 4461/2001) were disposed of by order dated 9.5.2001 and a direction was issued to the Appellant University in L.P.A. Nos. 576/2001 and 577/2001 to conduct the examination of the students of the said College and publish the result of the students, whose examinations have already been held.

4. The facts necessary for disposal of the present appeals are as follows:

Alkarim Educational Trust, Patna, a society registered under the Societies Registration Act, established the Katihar Medical College to impart medical education as a minority institution. It approached the State Government for grant of recognition and also moved the L.N. Mithila University for grant of affiliation as well as to allow the students to appear in the examination. The same were not acceded to by the State Government and the University. Thereafter, the said Trust filed a writ application being C.W.J.C. No. 7985 of 1990, which was dismissed by a majority judgment dated 7.4.1992. The order of this Court was challenged before the Apex Court in SLP No. 7502 of 1992. The Apex Court passed an interim order on 16.7.1992 directing the authorities to permit the students to appear in the examination. Civil Appeal No. 2590 of 1992, arising out of SLP No. 7502 of 1992, was finally disposed of on 27.2.1996, a copy of the order has been annexed as Annexure 1 to C.W.J.C. No. 4461/2001). The Apex Court having taken notice of the fact that the affiliation by the State Government and the University being unnecessarily delayed, issued direction to take steps for grant of affiliation the institution immediately and issue the necessary orders without loss of time. Thereafter, admittedly, the University granted affiliation to the College by notification dated 2.4.1996 and started conducting examination and publish the result of the students. Subsequently, the examination Board of the University by a decision taken in the meeting dated 20.12.2000 refused to take examination on the ground that there is no recognition order of the State Government and in absence of that it is not possible for the University either to publish the result of the examinations already held or to hold further examination.

5. The stand of the State is that in compliance with the direction of the Supreme Court, it issued a Press Communique in daily newspaper to make ware of the people in general and students admitted in the College about the order of the

Apex Court and a copy of the Press communique has been annexed as Annexure "A" to the counter-affidavit filed on behalf of the State in C.W.J.C. No. 4461/2001. The further stand of the State is that so far as the conduct of examination or the publication of the result is concerned, it is the University, which is competent for the same (Paragraph 12 of the said counter-affidavit). The institution has approached the Medical Council of India and the Central Government for grant of recognition to the College for the award of M.B.B.S. Degree. The Executive Committee recommended for grant of recognition to the College for the award of M.B.B.S. Degree granted by the University with only intake of 60 students. The General Body of the Medical Council of India approved the aforesaid recommendation of the Executive Committee and sent the matter to the Central Government on 19.2.2001 to issue necessary notification with regard to recognition of the College. While the matter was pending before the learned Single Judge, the Central Government did not issue a notification, but a supplementary affidavit has been filed on behalf of the students of the College, wherein it is stated that the Central Government has already granted recognition to the Katihar Medical College for the award of the M.B.B.S. Degree granted by the University with only intake of 60 students, and a notification u/s 11(2) of the Indian Medical Council Act dated 3.8.2001 has been issued and the First Schedule of the Act has been amended and the College and the Degree awarded by it have been included therein. The M.B.B.S. qualification has been recognised when granted in or after March, 2001, in respect of the College, a copy of which has been annexed as Annexure "C" to the second additional affidavit filed on behalf of the Respondents No. 1 to 5 in L.P.A. No. 191/2001.

6. The facts narrated above clearly show that the recognition has been granted by the Central Government and the College in question has been included in the Schedule of the Indian Medical Council Act. It is an admitted position that in pursuance of a direction of the Supreme Court, the University granted affiliation for conducting examination. So far as the State Government is concerned, no doubt, it has not issued a formal notification of recognition/affiliation, but being aware of the order of the Supreme Court, it has issued a Press Communique which, in substance, amounts to granting recognition to the College. The State has already stated in the counter-affidavit that so far as the conduct of the examination is concerned, it is the responsibility of the University and the State has nothing to do in the matter.

7. In that view of the matter, the very ground given by the Appellant-University in the two appeals (L.P.As. No. 576 and 577/2001) for not publishing the result and holding the examination does not stand to reason. At this stage, we would like to mention about the submission advanced on behalf of the Appellant-University that u/s 30 of the Bihar State Universities Act, the date of examination has to be fixed by the State Government and not by the University. The State, as stated above, has already stated in its counter-affidavit that it has nothing to do with the examination rather it is the University, which has to conduct the examination. This apart, as a matter of fact, the State Government is not issuing

any notification fixing the date of examination and the Universities of Bihar are fixing and notifying the dates of examination. Thus, the said point raised on behalf of the Appellant-University is devoid of any substance.

8. The other submission advanced on behalf of the Appellant-University that the affiliation was granted by the Vice Chancellor and not by the Senate is also devoid of any substance. The Apex Court directed for grant of affiliation and the University has to consider and it has considered and granted the affiliation. Now the University cannot be allowed to take a plea that the earlier grant of affiliation was not according to law. If that submission is to be accepted then the officers of the University will be liable for contempt for not complying with the direction given by the Apex Court for all these years.

9. Thus, we do not find any merit in the two appeals (L.P.As. No. 576 and 577/2001) filed by the Appellant-University and, accordingly, they are dismissed. The University is directed to publish the result of the examinations already taken and conduct the examinations in the light of the notification issued by the Central Government on the recommendation of the Medical Council of India. However, in the facts and circumstances, the order for payment of cost is set aside.

10. So far as L.P.A. No. 191/2001 is concerned, it is an admitted position that one year internship is a part of the M.B.B.S. Course and the M.B.B.S. Course is not complete unless the internship for the said period is done after passing the M.B.B.S. examination. For doing internship, the registration with the Bihar Council of Medical Registration is must. The writ Petitioner Respondents in the said appeal, as stated above, filed the writ application for a direction to the State and the Bihar Council of Medical Registration to grant registration so that the students may continue with the internship. In view of the notification issued by the Central Government recognising the Katihar Medical College and including it in the Schedule of the Medical Council Act, there will be no difficulty in granting registration by the Bihar Council of Medical Registration to the students of the College in terms of the notification issued by the Central Government.

11. It was submitted on behalf of the Appellant State in L.P.A. No. 191/2001 that this Court, in exercise of writ jurisdiction, cannot issue a direction for grant of provisional registration. It can only direct the State Government and the Bihar Council of Medical Registration to consider the matter in the light of directions or observations made by the court. this Court cannot usurp the function of the Bihar Council of Medical Registration and issue direction for grant of provisional registration.

12. It appears from the record that in pursuance of the order of the learned Single Judge, provisional registration has been granted to the writ Petitioner-Respondents. The State has filed a supplementary affidavit on 6.8.2001 annexing the letter dated 12.2.2001 issued by the authority of the Bihar Council of Medical Registration, wherein it is stated that in pursuance of the order passed by the learned Single Judge and the Gherao made by the students of the College in his

office since 10 O'clock in the morning, the provisional registration was given to the students of the College in question.

13. The law is well-settled that in exercise of the power under Article 226 of the Constitution of India, the judiciary cannot usurp the function of the executive. If it finds that any order passed by the executive is not according to law, it can demolish a bad order and send the matter for reconsideration. Similarly, in the case where the authority vested with the power to do a particular thing has failed to do the same, the court can issue a writ of mandamus directing the authority to consider the matter on the basis of correct principles. But, in no case, this Court can issue a direction in the sense that it will amount to acting as if it were the executive or the authority required to decide the matter and issue order.

14. Accordingly, the direction issued by the learned Single Judge to grant provisional registration, in our view, is not according to law and the same is quashed. In view of the conduct of the students in obtaining the provisional registration certificate by force, this Court cannot take notice of the grant of provisional registration certificate. The main hurdle in the way of the Bihar Council of Medical Registration to grant registration for internship was non-recognition of the College by the Central Government, but now a notification by the Central Government, as stated above, has been issued granting recognition to the College and as such there is no legal impediment in granting the registration to the students of the College to the extent of the numbers recommended by the Medical Council of India. Accordingly, the State Government and the Bihar Council of Medical Registration are directed to consider the matter for grant of provisional registration to the students of the Katihar Medical College, who have already applied within a period of two weeks from the date of receipt/production of a copy of this order.

15. In the result, the two appeals (L.P.A. No. 576 of 2001 and L.P.A. No. 577 of 2001) are dismissed. L.P.A. No. 191 of 2001 filed by the Appellant-State of Bihar is allowed to the extent mentioned above.