

(2001) 08 PAT CK 0002

In the Patna High Court

Case No : L.P.A. No's. 630 and 633 of 2001

B.N. Mandal University

APPELLANT

Vs

Sanjay Kumar Shukla and Others and Harvinder Kaur and Others

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Bihar State Universities Act, 1976 — Section 39

Citation : (2001) 4 PLJR 17

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

Bench : Division Bench

Advocate : B.K. Jha and Uday Chandra Prasad, for the Appellant; Rajendra Pd. Singh, Sadanand Jha and Dharmeshwar Mishra, for the Respondent

Final Decision : Dismissed

Judgement

1. Both the 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. 630/2001 arises out of C.W.J.C. No. 3607 of 2001, which was filed by the writ Petitioner-Respondents for a direction to the Appellant. B.N. Mandal University (for short "the University") to publish the result of final M.B.B.S. examination of the session 1990-91, which was held from January to May, 2000.

3. L.P.A. No. 633/2001 arises out of C.W.J.C. No. 3606 of 2001, which was filed by the writ Petitioner-Respondents for a direction to the Appellant-University to hold the final M.B.B.S. examinations for the sessions 1991-92 and 1992-93.

4. The material facts for disposal of the present appeals are that the private Respondents in both the appeals are students of the Mata Gujri Memorial Medical College (for short "the College"). The said College was established in 1991 by the organisers as a private Medical College. They claim it as a minority institution. After establishment of the College, they moved before the State Government for recognition and before the University for affiliation. As no

decision was taken by them, they moved this Court by filing C.W.J.C. No. 5566 of 1993, which was disposed of with certain directions on 1.11.1994. The said judgment has been challenged by the Management of the said College before the Supreme Court by filing SLP (Civil) No. 20624 of 1994, giving rise to Civil Appeal No. 2194 of 1996. On 13.2.1995, the Supreme Court directed the College-authorities to approach the Central Government for grant of recognition/affiliation under the regulation framed by the Medical Council of India (for short "the M.C.I.") and in case any representation is made to the Central Government within the time mentioned therein, the Central Government shall have it examined from the M.C.I, for its consideration and decision in accordance with the regulation framed by the M.C.I. The M.C.I, shall within a period of two months from the date of receipt of the reference to the Government of India inspect the institution under the regulation.

5. The M.C.I, inspected the College and forwarded its report to the Central Government. The Central Government considered the report and submitted a report to the Apex Court that the College has all the facilities for running a Medical College and infra-structures for fifty annual admissions in the M.B.B.S. course.

6. At this stage, it is to be mentioned that recently the M.C.I, has inspected the College in question and a decision has been taken by its General Body in its meeting held on 22nd-27th June, 2001, recommending the recognition of the College for the award of M.B.B.S. Degree and has referred the matter to the Central Government for taking an appropriate decision.

7. The matter pending before the Apex Court was referred to a Constitution Bench on 18.1.1996 and a liberty was given to the College to move Hon"ble the Chief Justice of India for fixing an early date of hearing. It is stated that when no date was fixed by the Chief Justice, I A. No. 9 was filed in the appeal itself before the Supreme Court and an interim order was passed on 25.3.1996 (Annexure 5 to C.W.J.C. No. 3607/2001). The relevant parts of the interim order/direction are as follows:

1. In the event of the appeal being decided against the Appellant, the Appellant shall not claim any equities in its favour for the continuance of the institution by spending any amounts required in expanding the institution etc.
2. The students admitted prior to or hereafter will not claim not entitled to claim any equities for their undergoing the course of study in the institution. They were/are admitted with eyes wide open that they would lose the career.
3. Every year when admissions are to be made, it should be published in the news-paper that the admissions sought for by the students will be subject to the result of the pending appeal and if the appeal being decided against the institution, the students have to forgo their course of study they have undergone in he institution.

4. In the event of the appeal being decided against the institution, all persons who are admitted shall not claim any equities that they have undergone the course of study and their career is in jeopardy on account of non-grant of affiliation to the Appellant's institution.

5. The State Government and the Universities are directed to grant provisional affiliation to the Appellant's institution within a period of five weeks from today pending disposal of the appeal and such provisional affiliation is subject to the result in the appeal.

6. The admission made will be subject to the law declared by this Court in Unnikrishnan's case and all other cases connected therewith.

8. According to the directions issued by the Apex Court, the State Government and the University authorities were directed to grant provisional affiliation to the College within a period of five weeks from the date of the order. Pending disposal of the appeal, such provisional affiliation would be subject to the result of the appeal.

9. So far as the State Government is concerned, in terms of the direction is sued by the Supreme Court, it has not issued any formal order of provisional affiliation within time. From a perusal of Annexure "A" to the supplementary counter-affidavit filed on behalf of the State in C.W.J.C. No. 3606/2001, it appears that it has issued a press communique in the daily news-paper giving information to the public in general and the students admitted in the College in question and others regarding terms and conditions mentioned in the order passed by the Apex Court. So far as the University is concerned, it is an admitted position that it has granted provisional affiliation on 10.4.1996 in terms of the direction of the Supreme Court. It also appears that the University has held a number of examinations, which have been written in the order of the learned Single Judge and it is not necessary to mention about the same herein. Results were also published by the University. Later on, the University declined to publish the result of the final year of the M.B.B.S. examination of the session 1990-91, which was held in January to May, 2000. It also declined to hold the examinations of the students of the sessions in question i.e. 1991-92 and 1992-93.

10. It appears that the Examination Board of the Appellant-University in its meeting held on 20.12.2000, decided not to hold further examinations of the students of the College, primarily, on the ground that the State has not granted affiliation/recognition in terms of the order of the Supreme Court. Thereafter, two writ applications have been filed as stated above.

11. An affidavit has also been filed on behalf of the M.C.I, and it has stated therein that the College in question has already infra-structures and necessary recommendations have been made for grant of recognition by the General Body of the M.C.I, and now the matter is pending before the Central Government.

12. We fully agree with the view taken by the learned Single Judge that the

stand taken by the University is wholly arbitrary and unjustified and it amounts to disobeying the order of the Supreme Court. When the interim order has been passed by the Apex Court clearly indicating the consequences which the students have to face in case no recognition is granted to the College, the University cannot postpone holding of the examinations on the ground that the State has not granted formal affiliation, ignoring the fact that the State has stated before this Court that it has already issued a Press Communique informing the students about the order of the Supreme Court. It has also stated that it has already recommended the names of the students for admission to the said College. Thus, the State Government though has not issued a formal order of affiliation, but the action of the State aforementioned amounts to implied grant of provisional affiliation. On that ground, the University cannot withhold the examination.

13. Learned Counsel appearing for the Appellant-University raised only two points. The first point raised by him is that the grant of provisional affiliation by the University was made by the Vice Chancellor and not by a competent body i.e. the Senate and as such on the basis of the said provisional affiliation, the University cannot permit the students of the College in question to appear in the examination.

14. The said point advanced on behalf of the Appellant-University has to be rejected for the simple reason that the Apex Court has directed the University to grant provisional affiliation and pursuant to that the University has issued the provisional affiliation. Now, the University cannot be allowed to say that the provisional affiliation granted long back was not in terms of the Regulations. Internal fight between the various wings of the University cannot be a ground to hold that no provisional affiliation was granted. The stand of the University, if accepted, will amount to defiance of the order of the Supreme Court, for which the University and its authorities can be proceeded against for contempt.

15. The second point urged on behalf of the Appellant University was that the examinations are being held under the transitory regulation framed by the Vice Chancellor and approved by the Chancellor, which is contrary to the provisions contained in Section 39 of the Bihar State Universities Act, which contains a provision as to how the regulation has to be made.

16. Admitted position is that the regulation has been approved by the Chancellor of the Universities (Governor of the State) as required by the regulation and on the basis of the said regulation, which came into effect in 1992, examinations are being held and now at this stage the University cannot be allowed to say that it will not hold examinations under the transitory regulation. If this stand of the University is accepted then no examination will be held in the University with respect to any faculty.

17. The aforesaid two submissions advanced on behalf of the Appellant-University, in our view, have been made without there being any substance and the learned Single Judge has rightly issued, directions to the Appellant-University

to hold the examinations of the sessions in question and publish the result thereof and so also of the final MBBS examination held by it from January to May, 2000, of the session 1990-91.

18. For the aforementioned reasons, we find no merit in both the appeals and, accordingly, they are dismissed.