
(1999) 05 PAT CK 0010
In the Patna High Court
Case No : C.W.J.C. No. 5520 of 1989

Braj Bihar Kaur and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 21-05-1999

Acts Referred:

Citation : (1999) 3 PLJR 574

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Yogendra Mishra and M.K. Khare, for the Appellant; V.N. Sinha, Ajay Kumar and S.C. Jha for State and Janardan Pd. Singh, for the intervenor, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—As both the writ petitions are connected one, they have been heard together and are being disposed of by this common judgment.

2. Petitioners in both the writ petitions are the same. Petitioner No. 1 claims himself to be the Secretary of the Managing Committee of Prabhunath Singh (Mantriji) Physical Training College and Yog Sansthan, Chapra and Petitioner No. 2 is the Institution itself.

3. They have filed C.W.J.C. No. 5520 of 1989 for a direction to the State of Bihar to exempt the students of the College in question from appearing at the test examination and allow the admitted students in Sessions 1982-83, 1983-84, 1984-85 and 1985-86 to appear at the C.P.Ed. and D.P.Ed. examination. They have also prayed for a direction to Respondent No. 5, Bihar School Examination Board, to accept the fees and forms of the students of the aforesaid sessions for appearing in the examination.

4. In the year 1982 it was decided to open a college in the Chapra town for imparting education in C.P.Ed. and D.P.Ed. and thereafter a society was registered to run the college which was named as Prabhunath Singh (Mantriji)

Physical Training College and Yog Sansthan (hereinafter to be referred to as Training College)

Thereafter, as usual in this State a dispute arose with regard to who will manage and run the training college. Two sets of persons started two different colleges as same training college. One training college was running at Mohalla Dahiawa of the Chapra town and other was running at Mohalla Sandha of the Chapra town. Petitioner No. 1, Braj Bihari Kaur, and Kapildeo Singh were the Secretary and Principal respectively of the college in question which was running at Sandha.

5. On 9.2.1988 vide annexure-1 to both the writ petitions, the State Government granted provisional recognition to the Training College of the Petitioner and granted permission to the students to appear at the examination conducted by the Bihar School Examination Board for the Sessions 1982-83, 1983-84, 1984-85 and 1985-86 on fulfilment of certain conditions under the provisions of Bihar Non-Government Physical College and Non-Government Teachers Training College and Non-Government Primary Teachers Education Colleges (Control and Regulation) Act, 1982 and rules framed thereunder (hereinafter to be referred to as the Act). The State Government constituted a Committee under the provisions of the Act for spot inspection of the College but the Committee in the year 1985 found that the infrastructure in the college was not upto the standards, the committee submitted a report wherein it did not recommend for grant of recognition of the college. However, by the aforesaid order vide annexure-1 the Government granted conditional recognition to the college for a period of six months with a clear stipulation that within the said period of six months necessary infrastructure has to be created. It also provided that the students of the college should appear at the test for training examination to be conducted by Government Health and Physical Education Training College, Rajendra Nagar, Patna. It also fixed the numbers of students to appear in the examination, for Sessions 1992-93 in C.P.Ed. 100 and in, D.P.Ed. 50 students, in 1983-84 in C.P.Ed. 50 and in D.P.Ed. 25 in 1984-85 in C.P.Ed. 50 and in D.P.Ed. 25 and in 1985- 86 in C.P.Ed. 50 and in D.P.Ed. 25. Thus total number of students allowed to appear in the examination were 375..

6. Thereafter, dispute arose between two sets of Managing Committee of the Training College as stated above as the College was established at two different places and they started filing cases. Jitendra Tiwary and others claiming to be the genuine students of the College in question filed a writ petition before this Court being C.W.J.C. No. 3221 of 1983 for issuance of a direction to the Principal of the Government Health and Physical Education Training College, Rajendra Nagar, Patna for holding test examination so that they may be able to appear at the final examination to be conducted by Bihar School Examination Board. This Court by order dated 16.5.1988 directed the Superintendent, Physical Education, Saran Division to verify the relevant document and if satisfied that the Petitioners are the genuine students and have qualified for the test examination recommended the name of the Petitioners to the Principal, Government Health

and Physical Education Training College, Rajendra Nagar, Patna and the Principal was directed to hold the test examination of the students as ordered by the State Government. It appears that inspite of the aforesaid direction the test examination was not conducted, the said students again filed another writ petition being C.W.J.C. No. 7669 of 1988 but before the matter could be finally heard, the annual Board Examination commenced and this Court by order dated 17.11.1998 ordered that it will be open to the Petitioners to seek appropriate relief in accordance with law if they are denied any legal right on account of any default of the Respondents with regard to any subsequent examination for which they qualify.

7. In the meantime, Superintendent, Physical Education, Saran in pursuance of the earlier direction issued by this Court after thorough enquiry forwarded the forms of 375 students which were genuine students according to him to the Principal, Government Health and Physical Education Training College, Rajendra Nagar, Patna on 31.8.1988. Inspite of the submission of the aforesaid forms of the genuine and regular students the test examination was not conducted and then the aforesaid students again filed C.W.J.C. No. 2683 of 1989. In the said case, by an interim order dated 15.6.89 it was directed that the fees and forms of the students must be accepted by 30th June, 1989. It was further ordered that no party will be prejudiced if Respondent No. 3, the Board takes the test examination of the Petitioners without prejudice to the rights and contentions of the Petitioners including the writ Petitioners. Accordingly, the Board was directed to take examination. The said interim order was notified by order dated 22.6.89 passed in C.W.J.C. No. 2683 of 1989 to the extent that the test examination of the Petitioners in the remaining papers as well as the scrutiny as to whether the Petitioners are genuine students of the institution or not shall be done by a person authorised by the State Government to do so preferably under the supervision of a superior officer. On 18.8.89 again in the said case an interim order was passed that if not otherwise impractical or impossible, Respondent Bihar School Examination Board shall accept fees and forms of the Petitioners, issue admit cards and allow them to appear in the ensuing examination of Physical Training conducted by it. The said writ petition was ordered to be heard along with C.W.J.C. No. 55 of 1989 but in the meantime the said writ petition was withdrawn on 9.2.94.

8. The present C.W.J.C. No. 5520 of 1989 was filed on 5.6.89 after filing of the aforesaid C.W.J.C. No. 2683 of 1989 filed by the students on 7.3.89. In this case, interim order was passed on 8.6.89 directing the authorities namely, Bihar School Examination Board, to accept the fees and forms of the students of the Petitioner's institution for C.P.Ed. and D.P.Ed. for the aforesaid sessions to be submitted within the time prescribed by the authorities (30.6.89). However, the result of these students will not be published until final disposal of this application. This court further ordered that this order is subject to the order that may be passed at the hearing of the matter in the admission stage and will not ensure to the benefit of any party in any manner whatsoever. It was farther

ordered that the Petitioners of this case must submit a list of students appearing in the ensuing examination by 12th June, 1989 before the authorities failing which this order will have no effect. On 30.8.89 this writ petition was admitted and the interim order was passed to the effect that if other institutions similarly placed have been given the exemption in regard to their students not being subjected to any test for being sent up then the students of this institution must be given similar facility. It was further ordered that the Petitioners of this case must serve a list of students, who have filled up fees and forms to the State Counsel.

9. While the aforesaid writ application was pending a list of 515 students was sent for appearing in C.P.Ed. and D.P.Ed. examination conducted by the Bihar School Examination Board. They appeared in the examination. However, the direction was given by this Court that the result shall not be published was suppressed by the Petitioner and result of those candidates was published. When the Board came to know about the suppression of the fact, a show cause notice was issued on 19.6.1993 which has been annexed as annexure-4 to C.W.J.C. No. 1882 of 1994. The Petitioners filed their show cause which has been annexed as annexure-5 and the Board after considering the matter cancelled the result of 515 students on 25.1.94 vide annexure-7 who had appeared for the sessions 1982-83 to 1985-86 on the ground that the results were published in breach of the interim order of the High Court which has been challenged in C.W.J.C. No. 1882 of 1994.

10. The Petitioners' case is that by order dated 9.2.1988 (annexure-1) conditional recognition was given to the college. This court by interim order passed in C.W.J.C. No. 5520 of 1989 directed the students to appear in the examination. This court gave a further direction that if other institutions similarly placed have been given exemption in regard to their students not being subjected to any test for being sent up then the students of this institution must be given similar facility. In pursuance of the said interim order the students have appeared in the examination and their result have also been published. However, the same has been wrongly cancelled later on by the Board. It is asserted on their behalf that the conditional recognition was given to other institutions and students of those institutions were allowed to appear in the examination by the State Government dispensing with the requirements of test and as such the same treatment should have been given to the Petitioner's institution and the students should not have been asked to appear in the written test. In any view of the matter, in terms of the direction given by this Court the Petitioner's students have appeared and as such their result is to be published after cancellation of the order contained in annexure-7 to C.W.J.C. No. 1882 of 1994.

11. The stand of the State Government as taken in the counter affidavit filed by it is that the conditional recognition was given on 9.2.88 but the authorities of the college till today have not complied with the terms and conditions incorporated in the conditional order of recognition. The college authorities

instead of taking steps for creating infrastructure raised dispute amongst themselves so as to establish their supremacy in the affairs of the college. C.W.J.C. No. 3221 of 1988 was filed by the students for a direction to enable the students to appear in the test examination which was disposed of on 16.5.88 and this Court directed the Superintendent, Physical Education, Chapra to verify the relevant documents and satisfy himself as to whether the Petitioners qualified for test examination to be conducted by Principal, Government Health and Physical Education College, Rajendra Nagar, Patna. Verification of the records could not be made as the Principal of the college failed to produce them which fact has been reported by the Superintendent, Physical Education, Chapra on 21.5.1988 and has been noticed by the Principal, Government Health and Physical Education Training College, Rajendra Nagar, Patna in his report dated 21.1.89. Sup pressing the aforesaid fact the Petitioners obtained interim order for appearing in the examination. The College till today has not fulfilled the conditions mentioned in the order of recognition. Further stand of the State is that in pursuance of the interim Order 515 students were allowed to appear and wrongly their results were published inspite of the direction of this Court not to publish their results which has been cancelled later on.

12. It is submitted on behalf of the Petitioners that the direction for holding test examination before appearing in the examination in the conditional order contained in annexure-2 was wholly unjustified specially when in similar circumstances other institutions were exempted for the said test. It is further submitted that the students have been allowed to appear in the examination and they have appeared but their results have been withheld only on the ground that they have not appeared in the test as provided in the conditional order.

13. Learned Counsel for the State submitted that there was dispute between the two sets of Managing Committees and two institutions were claiming themselves to be the Training College in question. In C.W.J.C. No. 3221 of 1988 this Court on 16.5.88 directed the Superintendent Physical Education, Chapra to verify the relevant documents and names of such persons who qualified for test recommend their names to the Principal, Government Health and Physical Education Training College, Rajendra Nagar, Patna for examination but the authorities of the college could not produce any document for verification before the Superintendent, Physical Education and as such no test was held of the students in terms of the order of recognition and in terms of the direction of this Court and as such the Petitioner has not complied the earlier direction given in the aforesaid writ petition and as such no direction should be issued to publish their result of the examination.

14. Unfortunately, in this case conflicting orders have been passed by this Court. In one case filed by the students a direction was given to Superintendent Physical Education, Chapra to verify the relevant documents and satisfied that the Petitioners of that case were genuine students and qualified for the test and then to recommend their forms for test examination before appearing in the

examination conducted by the Board for the aforesaid sessions whereas in the present C.W.J.C. No. 5520 of 1989 a direction was issued to the Board to allow the students of the Petitioner's institution to appear in the examination conducted by the Board as a result of which the Board allowed 515 students to appear in the examination whose results were wrongly published but later on cancelled.

15. Two institutions are claiming the Training College in question. There is no material to show that in which college the students have studied. A direction was also given in C.W.J.C. No. 3221 of 1988 to the Superintendent of Physical Education, Chapra to verify the relevant documents but the authorities of the college did not submit the documents as a result of which no verification has been made with regard to the real and genuine students of the aforesaid college. This apart, from the order of recognition itself, it appears that only 375 students of the aforesaid sessions were given permission to appear in the examination whereas 515 students have appeared in the examination in view of the interim order of this Court. The direction to hold preliminary test by a Government Health and Physical Education Training College before allowing to appear in the examination conducted by the Board was to verify and satisfy with regard to real institution and genuine students of the institution but no verification could be made in terms of the interim order of this Court due to non-cooperation of the Petitioner. It is not known what was the circumstances under which the exemption from appearing in the aforesaid test has been given to the other institutions. It might be that they have made certain papers available to show that the students of these institutions have attended the classes and the aforesaid institutions were genuine and under that circumstances students of those institutions were exempted from appearing in the test. Only on the ground that students of some of the institutions have been exempted from appearing in the test, such exemption cannot be claimed by the Petitioners.

16. However, the facts remains that the students of the Petitioner's institutions have been allowed to appear in the examination without aforesaid test in view of the interim order passed by this Court and as such issuing direction at this stage to appear in the test will be futile as the students of the Petitioner's institution have already appeared in the examination. Such interim order has been deprecated by the Supreme Court in catena of cases. Without verifying whether the students are genuine or not a direction by the interim order to appear in the final examination conducted by the Board, in my view, was not proper. In the Case of Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, the apex court held that passing such interim order is a loose and ill conceived sympathy which masquerades as interlocutory justice exposing the judicial discretion to the criticism of degenerating into private benevolence.

17. The next question is as what order should be passed in this case in view of the conflicting interim orders passed by this Court. According to the terms of conditional recognition only 375 students for different sessions were allowed to

appear in the examination. But 515 students have appeared in the examination without verification as ordered by this Court as to whether they were the genuine students of the institution or not. The result of the students who have appeared in the examination cannot be declared unless it is verified that they are the genuine students of the said college and have completed the courses. The said verification has to be made by the Higher authorities of the concerned Department. The Enquiry Officer will verify the genuineness of the students and the students who have gone under requisite training and were regular students and have read in the aforesaid four sessions and were within the number of students permitted to appear in the examination to be conducted by the Board are to be treated as genuine students. The Petitioner is directed to produce the relevant documents before the Enquiry Officer.

18. Accordingly, I direct the Director cum-Deputy Secretary, Youth Services, Bihar, Patna to enquire about the number of students admitted in the Petitioner's institutions for the aforesaid four sessions and as to whether they have undergone training and were eligible for appearing in the examination or not. The Director on completion of the enquiry will prepare a list of students who were regular students and have undergone training for the requisite period and will send their names to the Bihar School Examination Board and if those students are amongst those 515 students who have appeared in the examination then their results shall be published. The rest of the students whose name do not find place in the list of the Director shall not be published. The enquiry is to be concluded by the Director within two months from the date of receipt/production of this order and thereafter he will send the list within fifteen days to the Board and the Board will take a final decision within a month. If the relevant documents are not furnished by the Petitioner within the aforesaid period before the Director in connection with the enquiry then the result of the Petitioner's students shall not be published.

19. In the result, both the writ petition are allowed to the extent mentioned above. There shall be no order as to costs.